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Vol. 1 (of 2 Volumes)

Environmental Compliance Guide

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U.S. Department of Energy
Assistant Secretary for Environmental
Protection, Safety, and Emergency Preparedness
Office of Environmental Compliance and Overview
NEPA Affairs Division
Washington, D.C. 20585

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REFERENCE KEY

▭ = Process Box/Performance of Activity

◇ = Decision Box/Indication of Decision Point

⬭ = Terminal Box/Indication of Beginning, End or Point of Interruption in Functional Flows

○ = Decisionmaking Process

(0 — 0) = Reference to More Detailed Information Contained in Another Flowchart or Appendix

- - - - - - - -➤ = Optional Flow Path or Reference

△ = Initiate Process

▽ = Complete Process

⬚ = Area for Potential Project Delay

GLOSSARY

ACHP	Advisory Council on Historic Preservation
ACTS	Action Coordination and Tracking System
ASEV	Assistant Secretary for Environment
BACT	Best Available Control Technology
CEQ	Council on Environmental Quality
COE	Corps of Engineers
CZM	Coastal Zone Management
DE	District Engineer of COE
DEIS	Draft Environmental Impact Statement
DOE	Department of Energy
EA	Environmental Assessment
EPA	Environmental Protection Agency (may also refer to Regional Administrator of EPA)
ED	Executive Director ACHP
EIS	Environmental Impact Statement
ER	Environmental Report
E.S.	Endangered Species
EV	Office of Environment
FEIS	Final Environmental Impact Statement
FHBMS	Federal Hazard Boundary Maps
FIRMS	Federal Insurance Rate Maps
FNNEA	Federal Nonnuclear Energy Act
FONSI	Finding of No Significant Impact
F/W	Floodplains/Wetlands
FWS	Fish and Wildlife Service
GC	Office of the General Counsel
IP	EIS Implementation Plan
LAER	Lowest Achievable Emissions Rate
MOA	Memorandum of Agreement
NAAQS	National Ambient Air Quality Standards
NAD	NEPA Affairs Division
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOPH	Notice of Public Hearing
NPDES	National Pollutant Discharge Elimination System
NSPS	New Source Performance Standard
PCR	Preliminary Case Report
PSD	Prevention of Significant Deterioration
RA	Resource Applications
RCRA	Resource Conservation and Recovery Act
ROD	Record of Decision
RSO	Responsible Supervisory Official
SCS	Soil Conservation Service
SD	State Director
SEC/DOC	Secretary, Department of Commerce
SEC/DOE	Secretary, Department of Energy

GLOSSARY (Continued)

SEC/DOI	Secretary, Department of Interior
SEC/USDA	Secretary, Department of Agriculture
SHPO	State Historic Preservation Officer
SO_2	Sulfur Dioxide
TSP	Total Suspended Particulates
UIC	Underground Injection Control
USGS	United States Geological Survey
VOC	Volatile Organic Compounds
WRC	Water Resources Council

INTRODUCTION

On January 1, 1970, the President signed the National Environmental Policy Act (NEPA) into law. Over the past decade, NEPA has become the basic policy-setting Federal law relating to protection of the environment and has provided the initiative for passage of other Federal and state environmentally related statutes. Although many of these other environmental statutes have unique requirements, there is a need to coordinate compliance with NEPA and the other environmental statutes in order to avoid delays that can be caused by proceeding separately under each statute. Because of its multi-purpose scope, the NEPA process is an excellent means for accomplishing the required coordination. The Council on Environmental Quality (CEQ) recognized this and included, in its regulations implementing NEPA, provisions requiring the coordination of NEPA and other environmental review.

Although coordination of environmental requirements will alleviate some delays, the real key to solving delay and other problems associated with environmental compliance is integrating the NEPA and other environmental processes with other planning at the earliest possible time. When environmental review lags the planning process, the process is usually prolonged, environmental objectives can be compromised, and other problems such as litigation may be created. Integrating environmental review with early technical planning efforts does not impose any additional requirements. It does, however, provide the opportunity to rationally plan environmental compliance activities permitting identification and proper consideration of environmental issues, alternative actions, and mitigation measures during the development process. Sound environmental compliance planning enhances the probability of complete compliance and helps achieve timely implementation of energy policies, programs, and projects.

This Guide is intended to assist Department of Energy (DOE) personnel by providing information on the NEPA process, the processes of other environmental statutes that bear on the NEPA process, the timing relationships between the NEPA process and these other processes, as well as timing relationships between the NEPA process and the development process for policies, programs, and projects. This information should be helpful not only in formulating environmental compliance plans but also in achieving compliance with NEPA and various other environmental statutes.

The Guide is divided into three parts with related appendices:

Volume I:

Part I	Environmental Compliance Planning
Part II	Compliance with the National Environmental Policy Act

Part III Compliance with Other Federal Environmental Statutes

Volume II: Compilation of Federal Environmental Regulations

Part I provides guidance for developing environmental compliance plans for DOE actions. The compliance plan is developed using the guidance provided in Part I with the information in Parts II and III to determine the applicability and requirements of various environmental statutes and regulations and then factoring these requirements into the development schedule for the proposed action. Principles, strategies, and illustrative compliance schedules relating NEPA and other Federal, State, and local environmental authorities to generalized schedules for DOE actions regarding policy, technology program, and project development and implementation are provided. These generalized compliance scenarios depict the proper sequencing of environmental requirements necessary to maintain coordination and integration with scheduling.

Part II is devoted to NEPA with detailed flowcharts depicting the compliance procedures required by CEQ regulations and Department of Energy NEPA Guidelines. The flowcharts provide a step-by-step guide for compliance with NEPA and indicate DOE internal responsibilities based on DOE Order 5440.1A which generally provides for program office document preparation and EV assistance and oversight.

Appendix A contains suggested format, content, and procedures for selected NEPA actions referred to in the regulations and in the flowcharts in Part II. Where applicable, sample documents and notices have been incorporated.

Appendix B is a compilation of the most important NEPA authorities, including the Act, CEQ regulations, and DOE internal guidance.

Part III contains a series of flowcharts for other Federal environmental requirements that may apply to DOE projects. The flowcharts show both DOE and outside agency activities (e.g., submission of applications, consultation requirements, public hearings, issuance of permits). Each flowchart is based on existing or proposed responsible agency regulations; however, actual implementation procedures used in various regional offices may vary somewhat from that depicted. The flowcharts also contain simplified milestone charts demonstrating how compliance with NEPA and the particular requirement should be phased and how environmental review should be integrated with the project development process to minimize delays in satisfying environmental requirements. The internal DOE responsibilities depicted on the flowcharts are intended to avoid uncertainty by suggesting that (1) the DOE sponsoring office has the major responsibility for most of the activities involved in achieving compliance with the various requirements, and (2) the Assistant Secretary for Environment (ASEV), after consulting with the Responsible Supervisory Official (RSO) and General Counsel (GC), has responsibility for key environmental findings.

The Compliance Guide is provided in a looseleaf binder to accomodate changes and additions as environmental requirements change and as experience in the use of the Guide is gained. The Guide specifically addresses compliance with Federal statutes and regulations. Several of the laws, such as the Clean Air Act, Resource Conservation and Recovery Act, and others, provide for ultimate administration by the States. Most States also have their own environmental compliance and permitting requirements that must be satisfied during implementation of a proposed action. The large volume of these non-Federal requirements prohibits their inclusion in the Guide. However, the Office of Environmental Compliance and Overview's Operational and Environmental Safety Division has a complete compilation of state regulations and permitting requirements. Appropriate state and local government agencies should be consulted early, however, to determine their exact requirements. Applicable non-Federal requirements should also be factored into environmental compliance plans using the principles and strategies for phased compliance described in Part I.

The Guide is intended to assist the user in understanding vital Federal environmental regulations and internal environmental instructions that may affect implementation of a proposed action. The Guide is valid for most applications; however, there may be exceptions. The NEPA Affairs Division should be contacted for specific exceptions to the principles presented here. Moreover, the Guide does not add any new requirements to be met nor does it answer all questions that may arise with respect to environmental compliance, but it is a tool that can help in achieving compliance and avoiding delays.

If further questions arise concerning the material presented in this Guide, in particular, or environmental compliance, in general, please contact:

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PART I.
ENVIRONMENTAL COMPLIANCE PLANNING

PART I: ENVIRONMENTAL COMPLIANCE PLANNING

SECTION A: PROJECT LEVEL COMPLIANCE

This section provides generalized guidance for developing an overall environmental compliance plan for a proposed project. Such plans are intended to encompass all relevant Federal and state environmental requirements, including NEPA and other statutes such as the Clean Air Act, Clean Water Act, and the Endangered Species Act. Plans should be developed early as an integral part of the total planning effort. For a given action, a number of environmental requirements may be applicable and planning for compliance can involve complex trade-offs of time, program risk, financial and environmental costs, quality of environmental review, and other considerations. Failure to properly comply with these environmental regulations and statutes invites lawsuits, delays, loss of resources and environmental degradation.

General Planning Principles

The following general principles are involved in developing an efficient environmental compliance strategy that does not sacrifice the quality of review of major issues.

1. Integrate the requirements of NEPA and other environmental review procedures with the appropriate phase of project development. The development of environmental analyses, whether as part of an EIS or part of a permit application, depends on the availability of an appropriate level of engineering detail. Therefore, the timing of such analyses is primarily dictated by the project development schedule, i.e., progression from conceptual to preliminary to detailed design. EIS and "consultative"* reviews can generally be commenced with preliminary design information and performed in coordination with that phase. Permit applications generally require a greater level of detailed design information; therefore, permitting reviews** are generally performed later, in coordination with the detailed design phase.

---

* Consultative reviews are defined as those requirements that do not involve the granting or denial of a permit by a regulatory body and include, for example, those conducted under the National Historic Preservation Act and the Endangered Species Act.

** Examples of permit type requirements include Prevention of Significant Deterioration (PSD) permits issued under the Clean Air Act and permits issued under the Corps of Engineers by the authority of Section 404 of the Clean Water Act.

2. An EIS serves as a vehicle for presentation and critical review of the environmental issues associated with the project. Compliance with the NEPA process identifies major issues, allows public participation, and requires consideration of alternatives and mitigating measures. Publication of the final EIS allows a project to proceed and provides a certain degree of assurance of eventual project implementation. Initiation of substantial detailed design work and completion of permit applications for the proposed action prior to completion of the EIS process incurs a program risk in terms of (a) prejudicing the NEPA review with attendant litigation risk and criticism and (b) prematurely committing financial and other resources to the project.

3. Generally, construction cannot commence before sucessful completion of permitting environmental reviews. Chief among these are the EPA permits issued under the Clean Air Act and the Corps of Engineer permits for construction of facilities in navigable waters. Consultative reviews, although begun earlier, may become constraining in certain circumstances where sensitive issues arise, e.g., impact on an endangered species.

4. In light of the opportunities for phasing environmental reviews in coordination with engineering schedules as discussed above, any proposal that limits overall environmental review time (if defined from the time of public notice to prepare an EIS to receipt of the last critical permit or approval) should be carefully scrutinized since (a) it may not actually accelerate the project schedule and (b) it may force scheduling that incurs substantial project risk. On the other hand, initiatives to consolidate or coordinate like environmental reviews within a specific engineering phase (e.g., detailed design) may be quite useful and productive.

Phased Compliance

These General Planning Principles lead to the development of a proposed environmental planning strategy, termed "Phased Compliance." Phased Compliance is depicted for a hypothetical project in Figure I-1 and is characterized by

- Coordination of the EIS and consultative environmental reviews with the preliminary design phase.

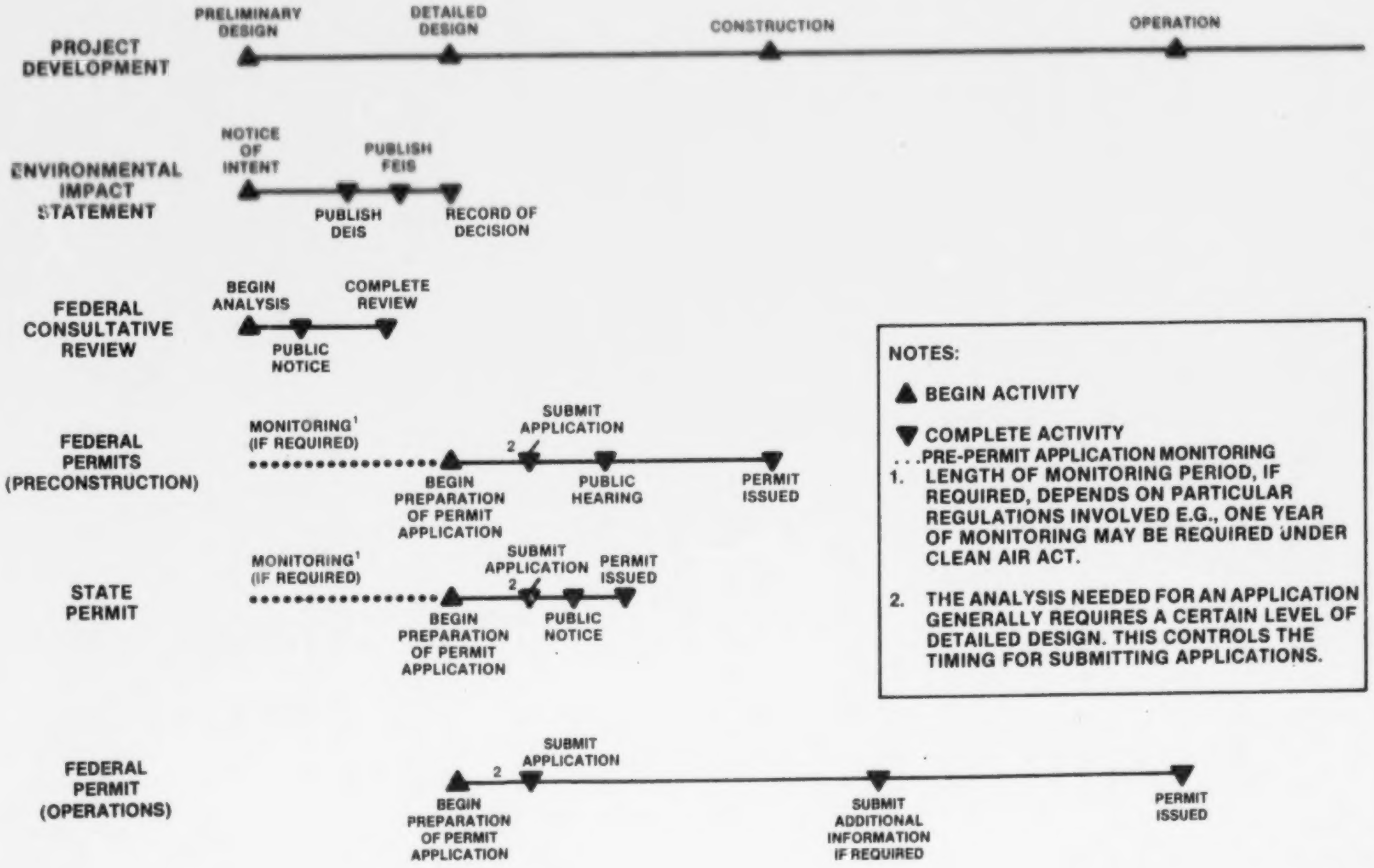
- Completion of the EIS process prior to commencement of full detailed design.*

---

* Some detailed design prior to the completion of the EIS process may be possible and even desirable in certain situations. For example, it may not be unreasonable to begin that portion of detailed design work directly applicable to permit application preparation following the close of the comment period on the draft EIS and review of comments received. This approach may, however, incur litigation risk and criticism and should be analyzed on a case-by-case basis.

FIGURE I-1

PROJECT ENVIRONMENTAL COMPLIANCE — PHASED COMPLIANCE


PROJECT DEVELOPMENT
PRELIMINARY DESIGN
DETAILED DESIGN
CONSTRUCTION
OPERATION
ENVIRONMENTAL IMPACT STATEMENT
NOTICE OF INTENT
PUBLISH DEIS
PUBLISH FEIS
RECORD OF DECISION
FEDERAL CONSULTATIVE REVIEW
BEGIN ANALYSIS
PUBLIC NOTICE
COMPLETE REVIEW
FEDERAL PERMITS (PRECONSTRUCTION)
MONITORING¹ (IF REQUIRED)
BEGIN PREPARATION OF PERMIT APPLICATION
2
SUBMIT APPLICATION
PUBLIC HEARING
PERMIT ISSUED
STATE PERMIT
MONITORING¹ (IF REQUIRED)
BEGIN PREPARATION OF PERMIT APPLICATION
2
SUBMIT APPLICATION
PUBLIC NOTICE
PERMIT ISSUED
FEDERAL PERMIT (OPERATIONS)
BEGIN PREPARATION OF PERMIT APPLICATION
2
SUBMIT APPLICATION
SUBMIT ADDITIONAL INFORMATION IF REQUIRED
PERMIT ISSUED

NOTES:

▲ BEGIN ACTIVITY

▼ COMPLETE ACTIVITY

. . .PRE-PERMIT APPLICATION MONITORING

1. LENGTH OF MONITORING PERIOD, IF REQUIRED, DEPENDS ON PARTICULAR REGULATIONS INVOLVED E.G., ONE YEAR OF MONITORING MAY BE REQUIRED UNDER CLEAN AIR ACT.

2. THE ANALYSIS NEEDED FOR AN APPLICATION GENERALLY REQUIRES A CERTAIN LEVEL OF DETAILED DESIGN. THIS CONTROLS THE TIMING FOR SUBMITTING APPLICATIONS.

- Submission of permit applications following publication of the EIS and Record of Decision
- Submission of permit applications and coordination of permitting reviews with the detailed design phase

Delayed Compliance

Delayed Compliance will normally result when inadequate attention is given to environmental requirements early in the planning process. A ripple effect is generated when preparation of the EIS is delayed until the detailed design phase. In many instances the permitting authority will not commence review of permit applications until a draft EIS, as a minimum, has been circulated. As a result, the permitting process is no longer controlled by the availability of detailed design information, but instead by the availability of the draft EIS.* This delays the start of construction and makes the EIS and other environmental review processes critical path items. Any delays in these processes will add further delay to the start of construction.

Conclusions

The phased environmental compliance strategy has a number of major benefits:

- It avoids or minimizes environmentally related delays to the start of construction.
- It avoids or minimizes premature commitment of project resources and allows for stepwise, progressive decisionmaking.
- It avoids prejudicing the NEPA review thereby reducing litigation risk and criticism.
- It will likely facilitate subsequent permitting processes through its early EIS preparation effort.

In view of these benefits the phase compliance strategy is strongly recommended as the approach for planning environmental compliance.

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* The Corps of Engineers, for example, by practice requires federal agencies to submit a draft EIS with a Section 404 permit application under the Clean Water Act (for applicants other than Federal agencies, the Corps may prepare their own EIS before approving the application and issuing the permit). Furthermore, other permitting agencies may be reluctant (particularly on controversial projects) to seriously review an application until the draft EIS is available. In addition, submittal of permit applications on a proposed action prior to the availability of a draft EIS may present program risk in terms of premature commitment of resources and subject the project to criticism of prejudicing the NEPA review.

SECTION B: PROGRAM LEVEL COMPLIANCE

Program level decisions are generally represented by the advancement of an energy technology, the adoption of a program plan or the issuance of program regulations. Environmental compliance at this level is concerned primarily with NEPA because the action forcing provisions and procedural requirements of other environmental requirements are generally project specific in nature. However consideration should be given to the policy and goals of these other environmental requirements during program development.

Technology Development

Technology development encompasses the research, development, demonstration, and commercialization stages required to bring a given energy technology into commercial application (Fig. I-2). A programmatic EIS, if required, will usually be prepared during the development stage (45 FR 20694) and should be reviewed for adequacy in advance of key program decisions and as new information becomes available or significant changes occur in the proposed program. The programmatic EIS may require a supplement to support key decisions to proceed with the next program phase whenever substantial changes in the program relevant to environmental concerns have been made or when there are significant new circumstances or environmental information that bears on the program.

Under the concept of tiering, the programmatic EIS provides a foundation for subsequent project level EISs that may be required for pilot plants, demonstration projects, or commercialization projects under a technology program. If significant new information is developed in the preparation of site-specific EISs or otherwise, it should be incorporated in the programmatic EIS as a supplement to support future key decisions to advance the proposed program.

Rulemaking

The proper relationship between the development of regulations to carry out a proposed DOE program and NEPA compliance activities is illustrated in Figure I-3. The NEPA determination should be requested at the initiation of the process. The Advance Notice of Rulemaking and the Notice of Intent that an EIS will be prepared should be published simultaneously, so that public input to the regulations and environmental document can be solicited at the same time. The draft EIS should be available when proposed regulations are published. In accordance with 40 CFR 1506.10(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

SECTION C: POLICY LEVEL COMPLIANCE

At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals, such as conservation, development of new resources, and use of more abundant resources. Policy level decisions may, for example, be represented by proposals for legislation.

FIGURE I-2

TECHNOLOGY DEVELOPMENT

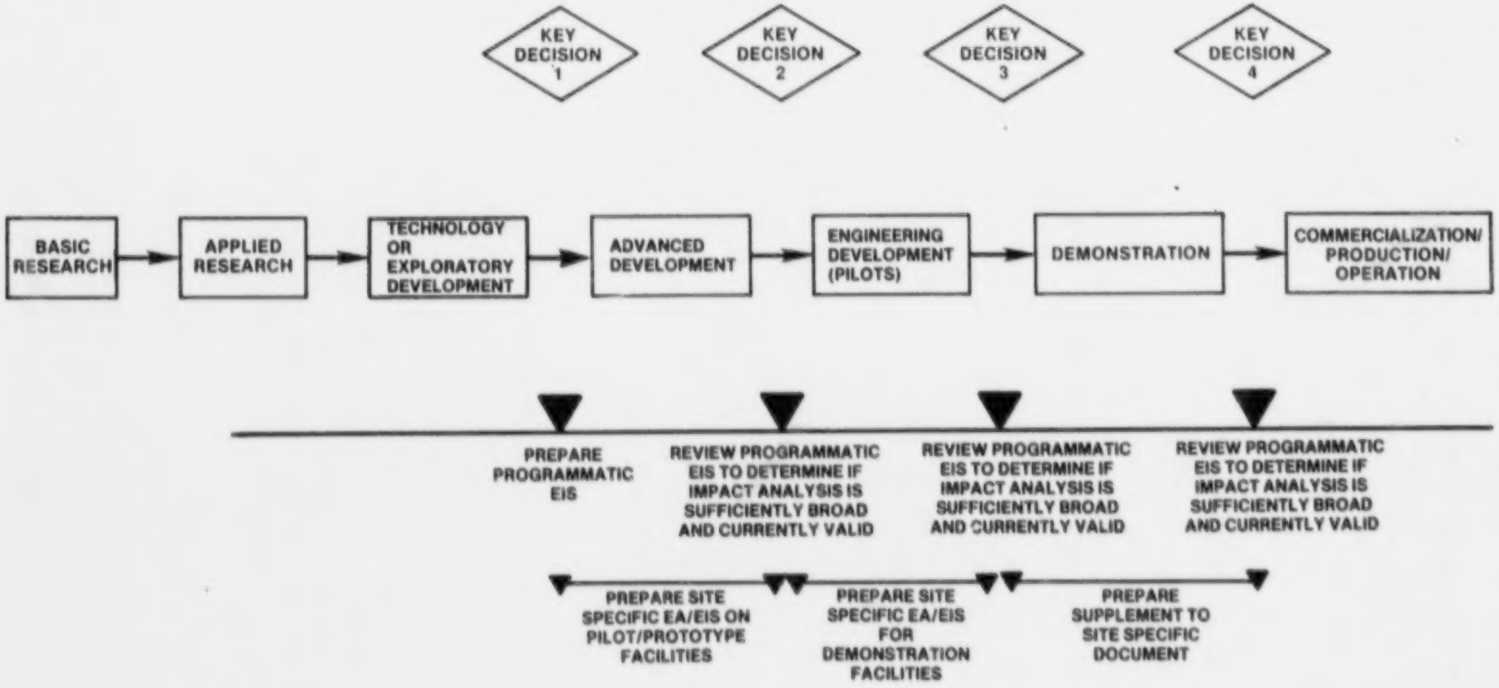
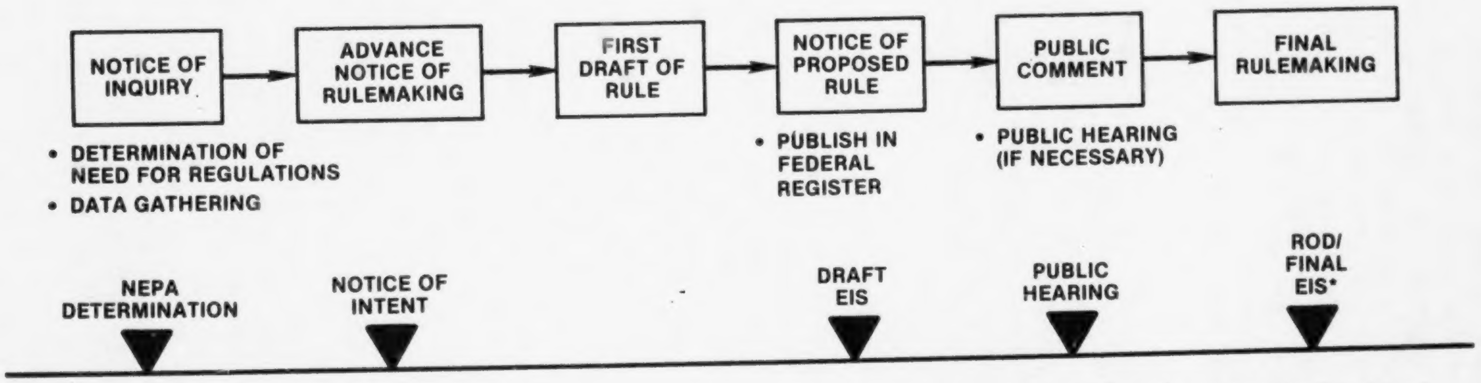

KEY DECISION 1
KEY DECISION 2
KEY DECISION 3
KEY DECISION 4
BASIC RESEARCH
APPLIED RESEARCH
TECHNOLOGY OR EXPLORATORY DEVELOPMENT
ADVANCED DEVELOPMENT
ENGINEERING DEVELOPMENT (PILOTS)
DEMONSTRATION
COMMERCIALIZATION/ PRODUCTION/ OPERATION
PREPARE PROGRAMMATIC EIS
REVIEW PROGRAMMATIC EIS TO DETERMINE IF IMPACT ANALYSIS IS SUFFICIENTLY BROAD AND CURRENTLY VALID
REVIEW PROGRAMMATIC EIS TO DETERMINE IF IMPACT ANALYSIS IS SUFFICIENTLY BROAD AND CURRENTLY VALID
REVIEW PROGRAMMATIC EIS TO DETERMINE IF IMPACT ANALYSIS IS SUFFICIENTLY BROAD AND CURRENTLY VALID
PREPARE SITE SPECIFIC EA/EIS ON PILOT/PROTOTYPE FACILITIES
PREPARE SITE SPECIFIC EA/EIS FOR DEMONSTRATION FACILITIES
PREPARE SUPPLEMENT TO SITE SPECIFIC DOCUMENT

FIGURE I-3

COORDINATION OF RULEMAKING AND NEPA ACTIVITIES
(REGULATIONS)


NOTICE OF INQUIRY
ADVANCE NOTICE OF RULEMAKING
FIRST DRAFT OF RULE
NOTICE OF PROPOSED RULE
PUBLIC COMMENT
FINAL RULEMAKING
• DETERMINATION OF NEED FOR REGULATIONS
• DATA GATHERING
• PUBLISH IN FEDERAL REGISTER
• PUBLIC HEARING (IF NECESSARY)
NEPA DETERMINATION
NOTICE OF INTENT
DRAFT EIS
PUBLIC HEARING
ROD/ FINAL EIS*

*NEPA DOCUMENTS AND COMMENTS ARE INCORPORATED INTO ADMINISTRATIVE RECORD

The NEPA process for proposals for legislation significantly affecting the quality of the human environment shall be integrated with the legislative process of Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on such a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be submitted up to 30 days later to allow time for completion of an accurate statement that can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

Preparation of the legislative environmental impact statement shall conform to the requirements of 40 CFR 1500 et seq. except (a) there need not be a scoping process and (b) the legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by the Environmental Policy Act except as otherwise provided for in 40 CFR 1506.8(b)(2). Figure 1-4 shows the desired relationship between the legislative proposal process and NEPA compliance activities.

During the proposal formulation and early drafting stages, DOE will identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document. These documents will normally be published in connection with the submittal of the proposal to Congress except as may be provided in 40 CFR 1506.8.

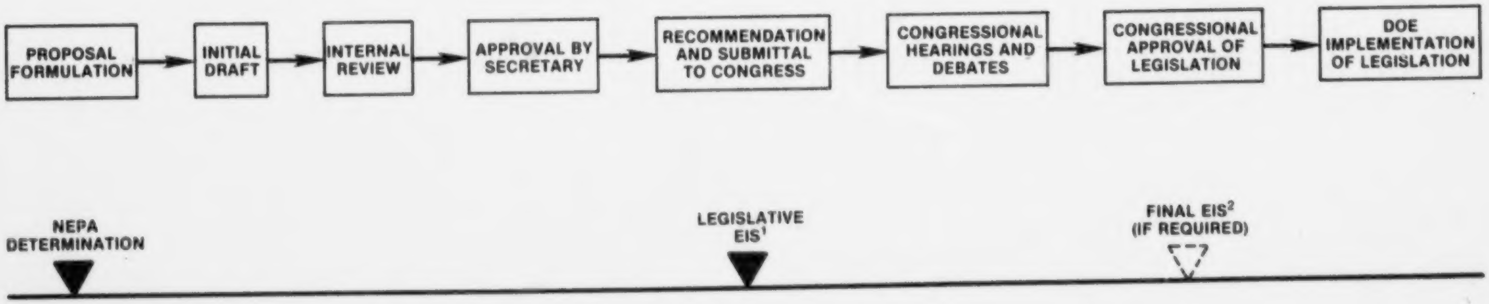
SECTION D: APPLICANT PROCESSES

In many instances, DOE receives applications for leases, permits, licenses, certificates, financial assistance, exemptions, or other similar actions planned by private entities. Although the applicant is not subject to the requirements of NEPA, the issuance of the leases, permits, licenses, etc., are considered major Federal actions for which DOE is responsible for NEPA compliance. The Council on Environmental Quality Regulations require Federal agencies to provide for environmental considerations for actions planned by a non-Federal entity before Federal involvement so that (a) policies or designated staff are available to advise potential applicants of studies or other information forseeably required for later Federal action, (b) the Federal agency consults early with appropriate state and local agencies and Indian Tribes and with interested private persons and organizations when its own involvement is reasonably forseeable, (c) the Federal agency commences its NEPA process at the earliest possible time.

DOE has issued guidelines (45 FR 20694) that implement this requirement of the Council on Environmental Quality Regulations. Figure I-5 depicts the generalized "Applicant Process" described in the guidelines, which allows for early consideration of environmental factors in DOE decisionmaking.

FIGURE I-4

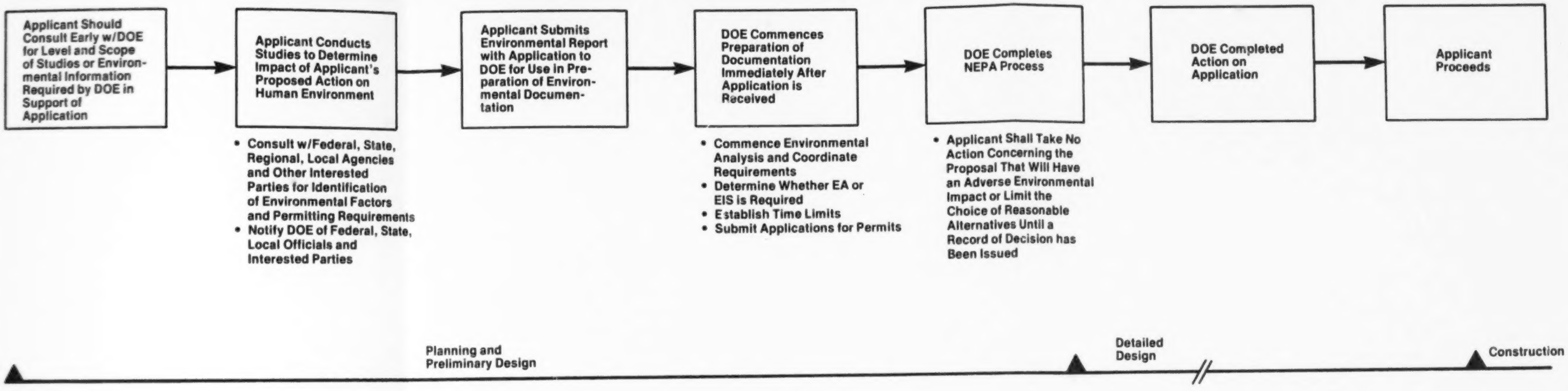
COORDINATION OF LEGISLATIVE PROPOSALS AND NEPA ACTIVITIES


PROPOSAL FORMULATION
INITIAL DRAFT
INTERNAL REVIEW
APPROVAL BY SECRETARY
RECOMMENDATION AND SUBMITTAL TO CONGRESS
CONGRESSIONAL HEARINGS AND DEBATES
CONGRESSIONAL APPROVAL OF LEGISLATION
DOE IMPLEMENTATION OF LEGISLATION
NEPA DETERMINATION
LEGISLATIVE EIS[1]
FINAL EIS[2] (IF REQUIRED)

NOTES:
1. SIMILAR TO DRAFT EIS, BUT CONSIDERED A "DETAILED STATEMENT"; INCLUDED AS PART OF THE LEGISLATIVE PACKAGE, BUT MAY BE SENT TO CONGRESS UP TO 30 DAYS AFTER SUBMITTAL OF PROPOSAL.
2. ONLY REQUIRED UNDER SPECIAL CONDITIONS, AS OUTLINED IN 40 CFR 1506.8(b)(2).

FIGURE I-5

APPLICANT* PROCESSES


Applicant Should Consult Early w/DOE for Level and Scope of Studies or Environmental Information Required by DOE in Support of Application
Applicant Conducts Studies to Determine Impact of Applicant's Proposed Action on Human Environment
• Consult w/Federal, State, Regional, Local Agencies and Other Interested Parties for Identification of Environmental Factors and Permitting Requirements
• Notify DOE of Federal, State, Local Officials and Interested Parties
Applicant Submits Environmental Report with Application to DOE for Use in Preparation of Environmental Documentation
DOE Commences Preparation of Documentation Immediately After Application is Received
• Commence Environmental Analysis and Coordinate Requirements
• Determine Whether EA or EIS is Required
• Establish Time Limits
• Submit Applications for Permits
DOE Completes NEPA Process
• Applicant Shall Take No Action Concerning the Proposal That Will Have an Adverse Environmental Impact or Limit the Choice of Reasonable Alternatives Until a Record of Decision has Been Issued
DOE Completed Action on Application
Applicant Proceeds
Planning and Preliminary Design
Detailed Design
Construction

*Applicants for a DOE Lease, Permit, License, Certificate, Financial Assistance, Allocation, Exemption or Similar Action

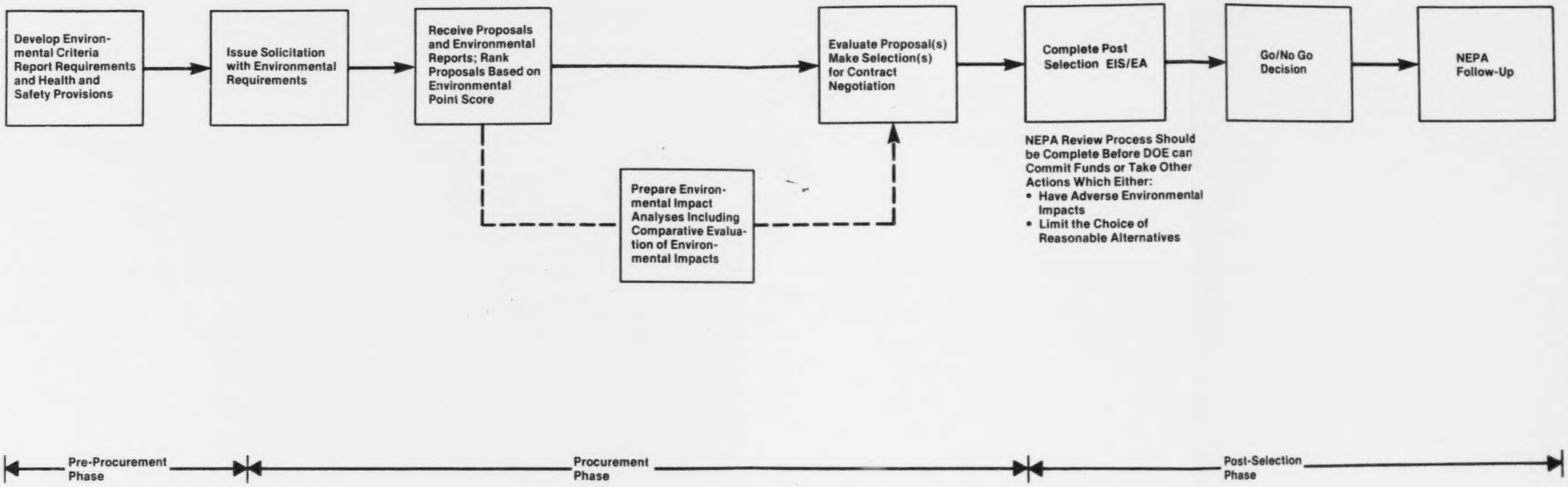
SECTION E: COMPETITIVE SELECTION PROCESS

DOE uses the competitive selection process for major systems acquisition projects, financial incentive programs such as those administered under the Federal Nonnuclear Research and Development Act, and other actions. Programs and projects undertaken through competitive selection require special procedures for complying with NEPA because of the confidential nature of the competitive selection process.

DOE has established special procedures for major systems acquisition projects that were published in the DOE guidelines (45 FR 20694). The procedures allow for the consideration of environmental factors using an environmental impact analysis including a comparative evaluation of the environmental impacts of proposals that have been submitted in response to a solicitation. These procedures should be used for other DOE actions that involve competitive selection. Figure I-6 provides the generalized process which has been developed for the competitive selection process.

FIGURE I-6

NEPA/COMPETITIVE SELECTION PROCESS


Develop Environmental Criteria Report Requirements and Health and Safety Provisions
Issue Solicitation with Environmental Requirements
Receive Proposals and Environmental Reports; Rank Proposals Based on Environmental Point Score
Prepare Environmental Impact Analyses Including Comparative Evaluation of Environmental Impacts
Evaluate Proposal(s) Make Selection(s) for Contract Negotiation
Complete Post Selection EIS/EA
Go/No Go Decision
NEPA Follow-Up
Pre-Procurement Phase
Procurement Phase
Post-Selection Phase

NEPA Review Process Should be Complete Before DOE can Commit Funds or Take Other Actions Which Either:
- Have Adverse Environmental Impacts
- Limit the Choice of Reasonable Alternatives

PART II.
COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

PART II. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

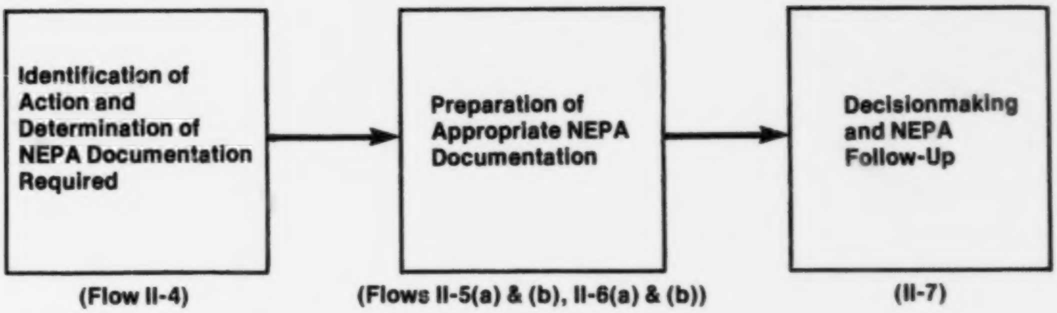
Flowcharts illustrating the step-by-step procedures for compliance with Council on Environmental Quality (CEQ) Regulations and Department of Energy (DOE) Guidelines for implementing the National Environmental Policy Act (NEPA) are provided in Part II. These flowcharts, which embody the CEQ and DOE authorities, are to be used in conjunction with the material in Appendixes A and B. Appendix A contains a discussion of documents identified in the flowcharts, such as Environmental Assessments, Finding of No Significant Impact, Notice of Intent, and others; where appropriate, sample documents have been included. In other instances, recommended formats and procedures are provided. Appendix B is composed of copies of the National Environmental Policy Act, CEQ regulations, and pertinent DOE NEPA related authorities.

Flowchart II-2, depicting the full NEPA compliance process, is the key to efficient utilization of Part II of this guide and may be considered an index chart. During review of NEPA and the implementing regulations, this chart will tie the various steps together in sequence to provide an overview of the regulations. Later, it will prove to be an effective checklist as NEPA is implemented.

To use Part II, the reader should first go to the index flowchart, II-2, and determine where the project is within the NEPA process, for example, preparation of an environmental assessment. The numbers in parenthesis (II-5(b)) at this step on flowchart II-2 refer to another flowchart where more information on the environmental assessment process may be found. Flowchart II-5(b) provides step-by-step procedures for preparation and review of the environmental assessment with references to the appropriate appendix for guidance on format and content. Referrals to other flowcharts are also provided to guide the user to the next step in the NEPA process.

FLOW II-1
NEPA COMPLIANCE

FLOW II-1
BASIC ELEMENTS OF NEPA COMPLIANCE


Identification of Action and Determination of NEPA Documentation Required
Preparation of Appropriate NEPA Documentation
Decisionmaking and NEPA Follow-Up
(Flow II-4)
(Flows II-5(a) & (b), II-6(a) & (b))
(II-7)

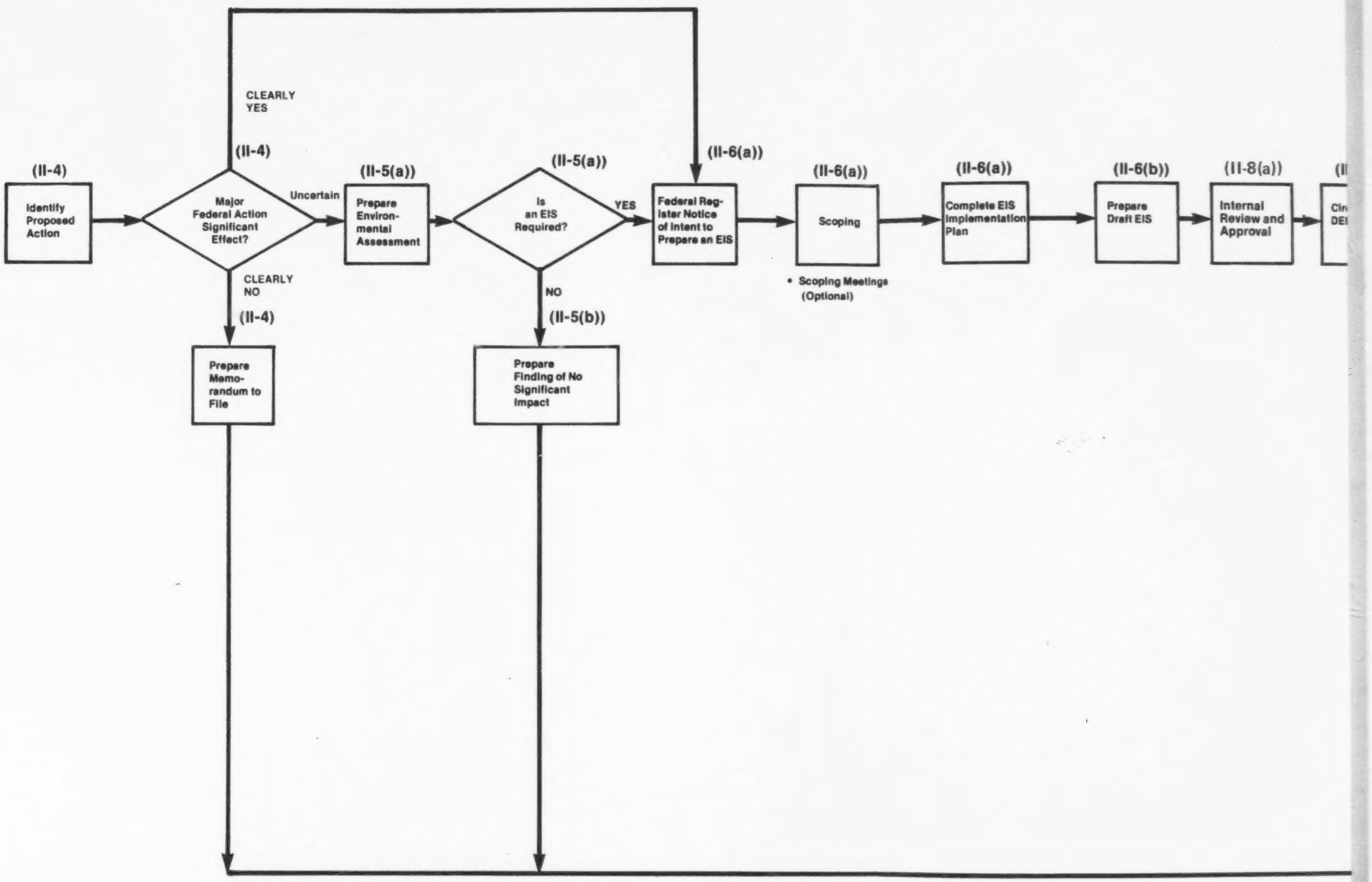
EMPHASIS

- **Proposed DOE Administrative Actions and Legislative Proposals Are Subject to NEPA, and Require a NEPA Review**
- **Appropriate NEPA Documents Are Required to be Considered by Decisionmakers Before Decisions Are Reached**
- **Certain Implemented Decisions Should Receive Follow-Up Monitoring**

Legend:

NEPA—National Environmental Policy Act
DOE—U.S. Department of Energy

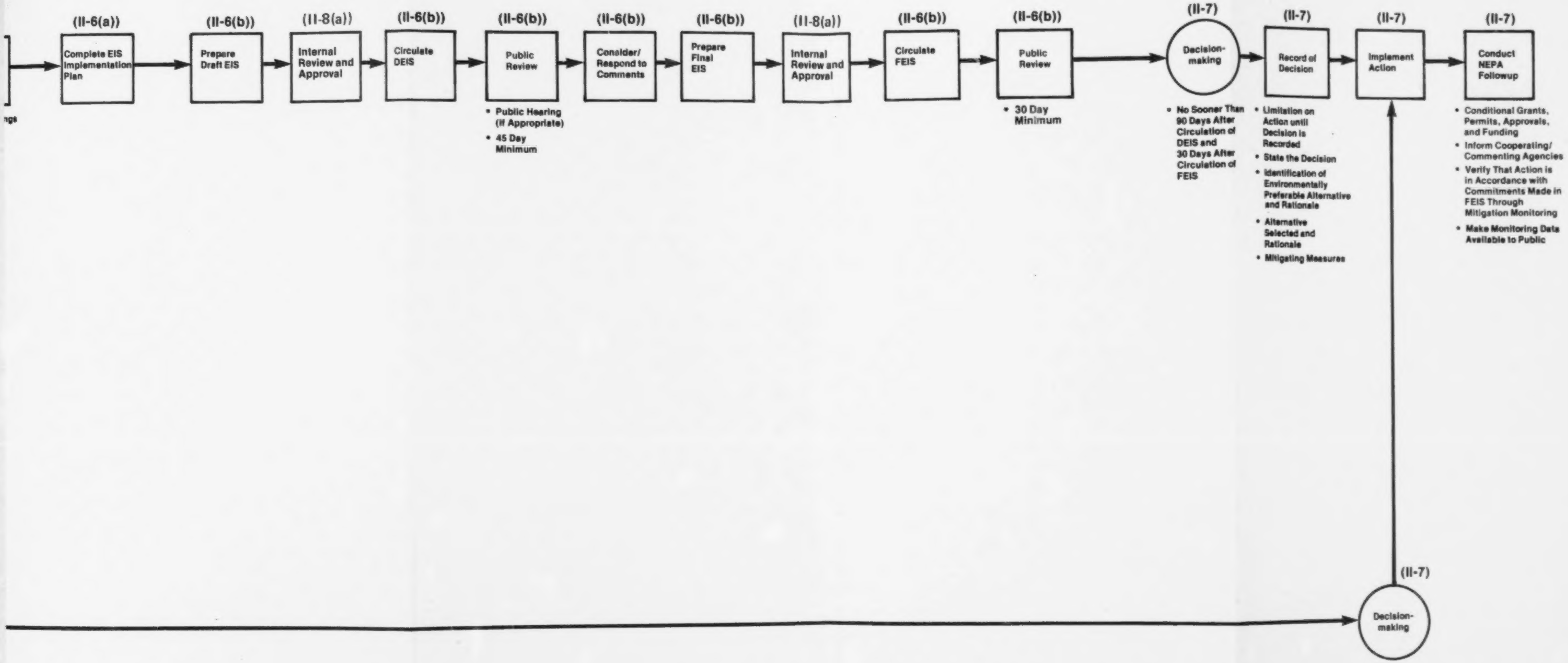
FLOW II-2
NEPA PROCESS (DOMESTIC)


(II-4)
Identify Proposed Action
(II-4)
Major Federal Action Significant Effect?
CLEARLY YES
Uncertain
CLEARLY NO
(II-4)
Prepare Memo-randum to File
(II-5(a))
Prepare Environ-mental Assessment
(II-5(a))
Is an EIS Required?
YES
NO
(II-5(b))
Prepare Finding of No Significant Impact
(II-6(a))
Federal Reg-ister Notice of Intent to Prepare an EIS
(II-6(a))
Scoping
• Scoping Meetings (Optional)
(II-6(a))
Complete EIS Implementation Plan
(II-6(b))
Prepare Draft EIS
(II-8(a))
Internal Review and Approval
(II
Cir
DEI

Legend:

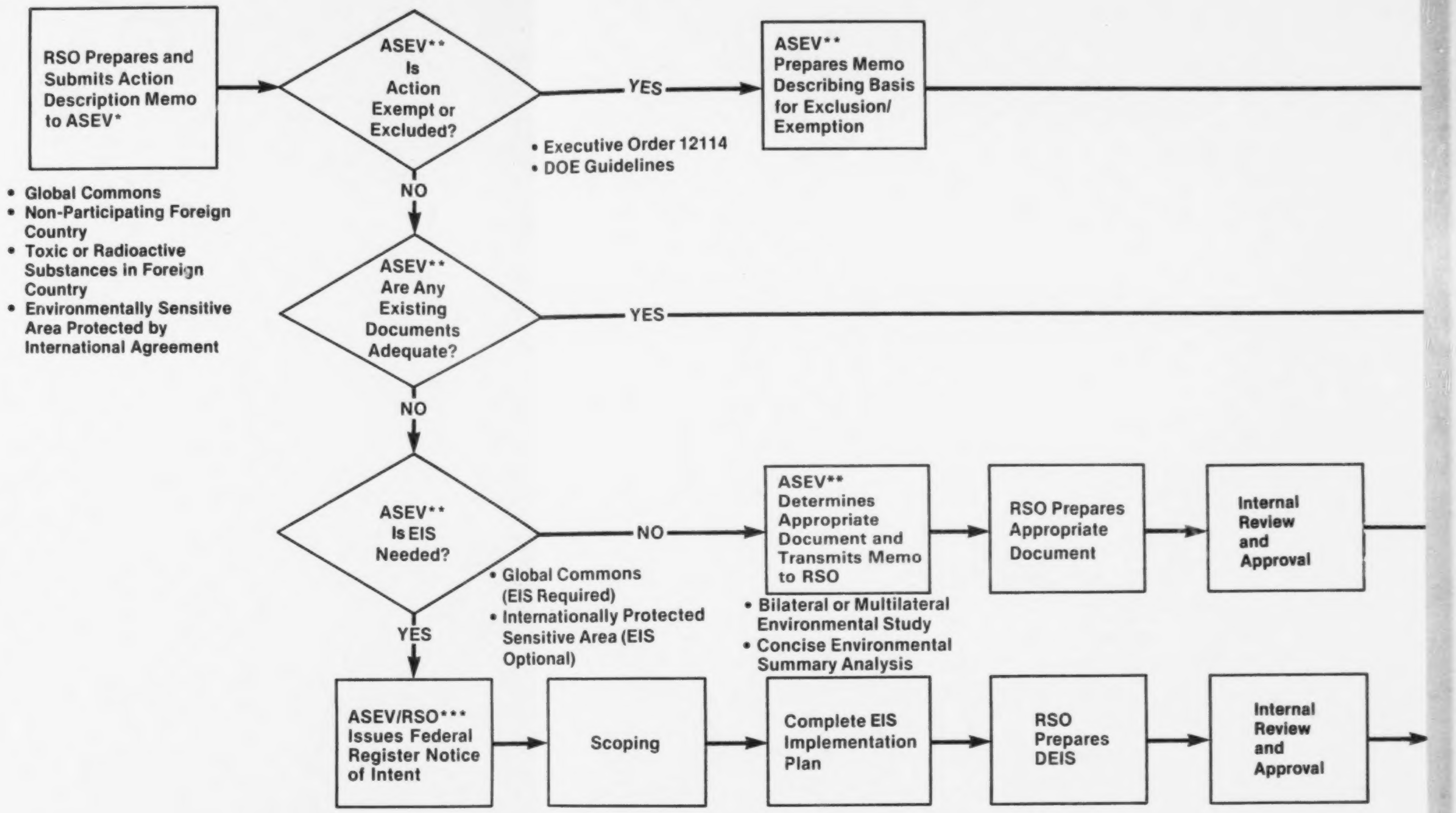
EIS—Environmental Impact Statement
DEIS—Draft Environmental Impact Statement
FEIS—Final Environmental Impact Statement
NEPA—National Environmental Policy Act

FLOW II-2
TYPICAL FLOW OF THE NEPA PROCESS DOMESTIC ACTIONS
(REFERENCE 40 CFR 1500-1508)


ngs
(II-6(a))
Complete EIS Implementation Plan
(II-6(b))
Prepare Draft EIS
(II-8(a))
Internal Review and Approval
(II-6(b))
Circulate DEIS
(II-6(b))
Public Review
• Public Hearing (If Appropriate)
• 45 Day Minimum
(II-6(b))
Consider/ Respond to Comments
(II-6(b))
Prepare Final EIS
(II-8(a))
Internal Review and Approval
(II-6(b))
Circulate FEIS
(II-6(b))
Public Review
• 30 Day Minimum
(II-7)
Decision-making
• No Sooner Than 90 Days After Circulation of DEIS and 30 Days After Circulation of FEIS
(II-7)
Record of Decision
• Limitation on Action until Decision is Recorded
• State the Decision
• Identification of Environmentally Preferable Alternative and Rationale
• Alternative Selected and Rationale
• Mitigating Measures
(II-7)
Implement Action
(II-7)
Conduct NEPA Followup
• Conditional Grants, Permits, Approvals, and Funding
• Inform Cooperating/ Commenting Agencies
• Verify That Action is in Accordance with Commitments Made in FEIS Through Mitigation Monitoring
• Make Monitoring Data Available to Public
(II-7)
Decision-making

Note: This flow diagram is intended to be a general representation of the NEPA process. For information concerning particular NEPA activities, refer to the detailed flow diagrams referenced in the parentheses. For legislative proposals, see Figure I-4.

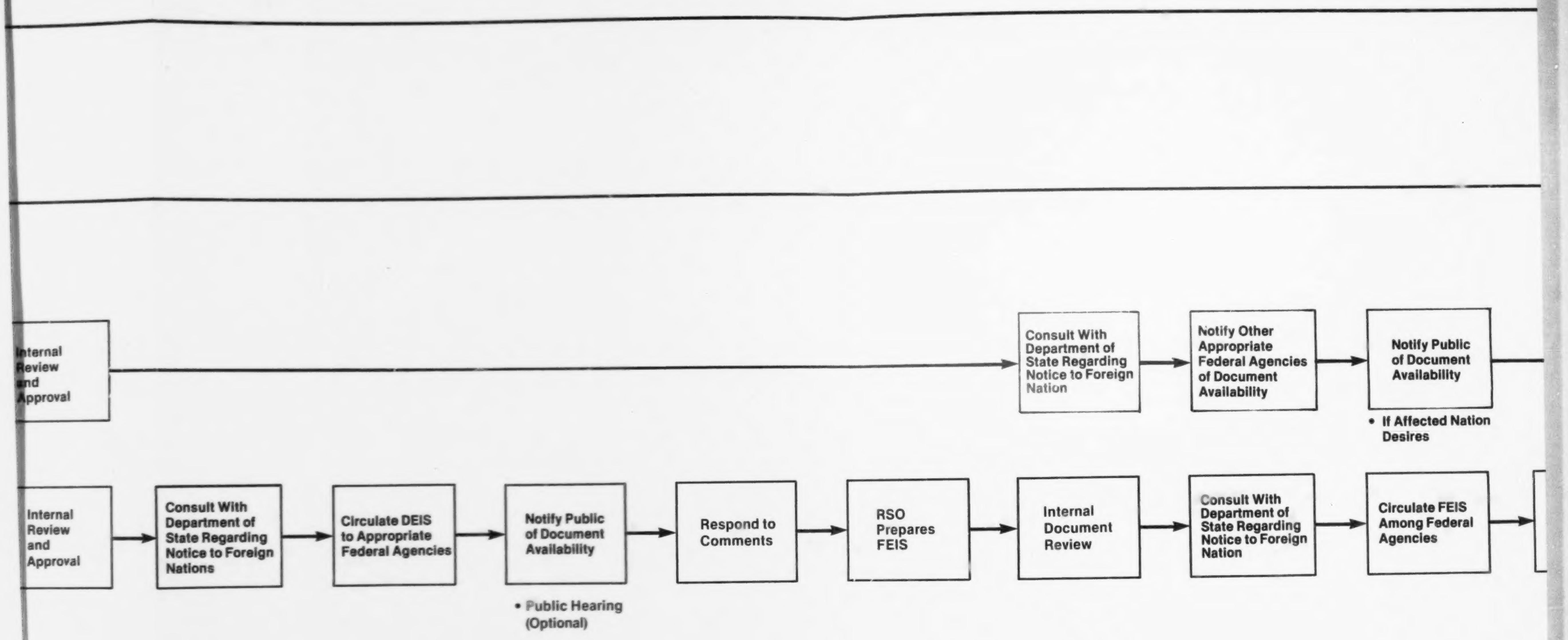
FLOW II-3
NEPA PROCESS (INTERNATIONAL)


RSO Prepares and Submits Action Description Memo to ASEV*
• Global Commons
• Non-Participating Foreign Country
• Toxic or Radioactive Substances in Foreign Country
• Environmentally Sensitive Area Protected by International Agreement
ASEV** Is Action Exempt or Excluded?
YES
• Executive Order 12114
• DOE Guidelines
ASEV** Prepares Memo Describing Basis for Exclusion/ Exemption
NO
ASEV** Are Any Existing Documents Adequate?
YES
NO
ASEV** Is EIS Needed?
NO
• Global Commons (EIS Required)
• Internationally Protected Sensitive Area (EIS Optional)
ASEV** Determines Appropriate Document and Transmits Memo to RSO
• Bilateral or Multilateral Environmental Study
• Concise Environmental Summary Analysis
RSO Prepares Appropriate Document
Internal Review and Approval
YES
ASEV/RSO*** Issues Federal Register Notice of Intent
Scoping
Complete EIS Implementation Plan
RSO Prepares DEIS
Internal Review and Approval

Legend:

ASEV—Assistant Secretary for Environment
EIS—Environmental Impact Statement
RSO—Responsible Supervisory Official
DEIS—Draft Environmental Impact Statement
FEIS—Final Environmental Impact Statement
DOE—U.S. Department of Energy
GC—General Counsel
ASEV/RSO—ASEV Has Lead Responsibility,
RSO Has Assistance Responsibility

*Applicants
Permit, Lic
Financial A
Exemption
Should Con
Early as Po
Planning Pr
Guidance w
Appropriate
Any Studie
Information
Require to
or in Suppo


nternal
Review
nd
Approval
Consult With Department of State Regarding Notice to Foreign Nation
Notify Other Appropriate Federal Agencies of Document Availability
Notify Public of Document Availability
• If Affected Nation Desires
Internal Review and Approval
Consult With Department of State Regarding Notice to Foreign Nations
Circulate DEIS to Appropriate Federal Agencies
Notify Public of Document Availability
• Public Hearing (Optional)
Respond to Comments
RSO Prepares FEIS
Internal Document Review
Consult With Department of State Regarding Notice to Foreign Nation
Circulate FEIS Among Federal Agencies

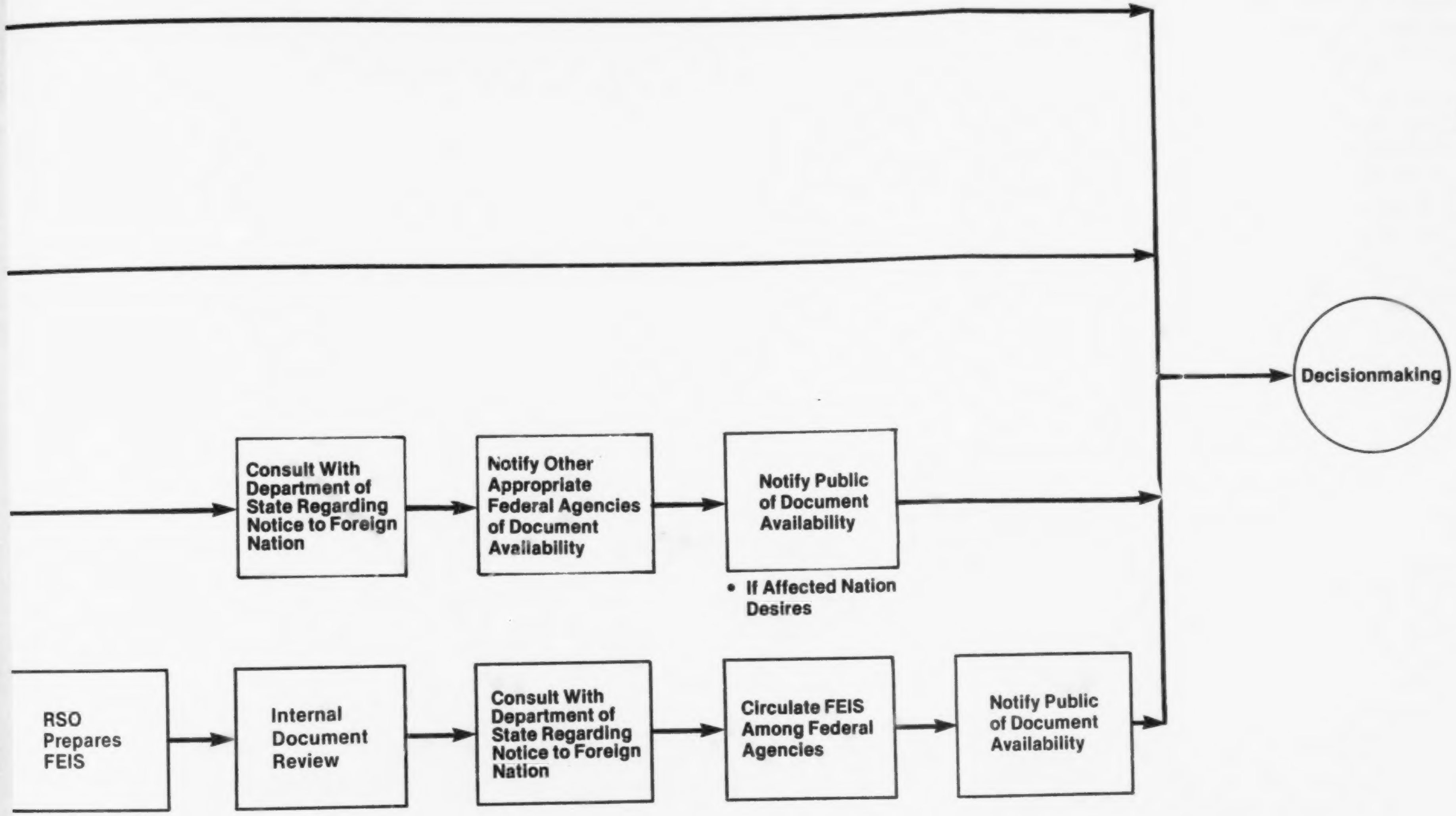
*Applicants for a DOE Lease, Permit, License, Certificate, Financial Assistance, Allocation, Exemption or Similar Action Should Consult with DOE as Early as Possible in Their Planning Processes to Obtain Guidance with Respect to the Appropriate Level and Scope of Any Studies or Environmental Information which DOE may Require to be Submitted as Part or in Support of Their Application.

**After Consultation with GC.

***State is Designated as Lead Agency for Environmental Review of All Activities Involving the Export of a Nuclear Production, Utilization or Waste Management Facility in Accordance with a Uniform Set of Guidelines (44 FR 65560, 11/13/79) that Do Not Necessarily Involve All the Procedural Requirements Depicted in This Flow Diagram.

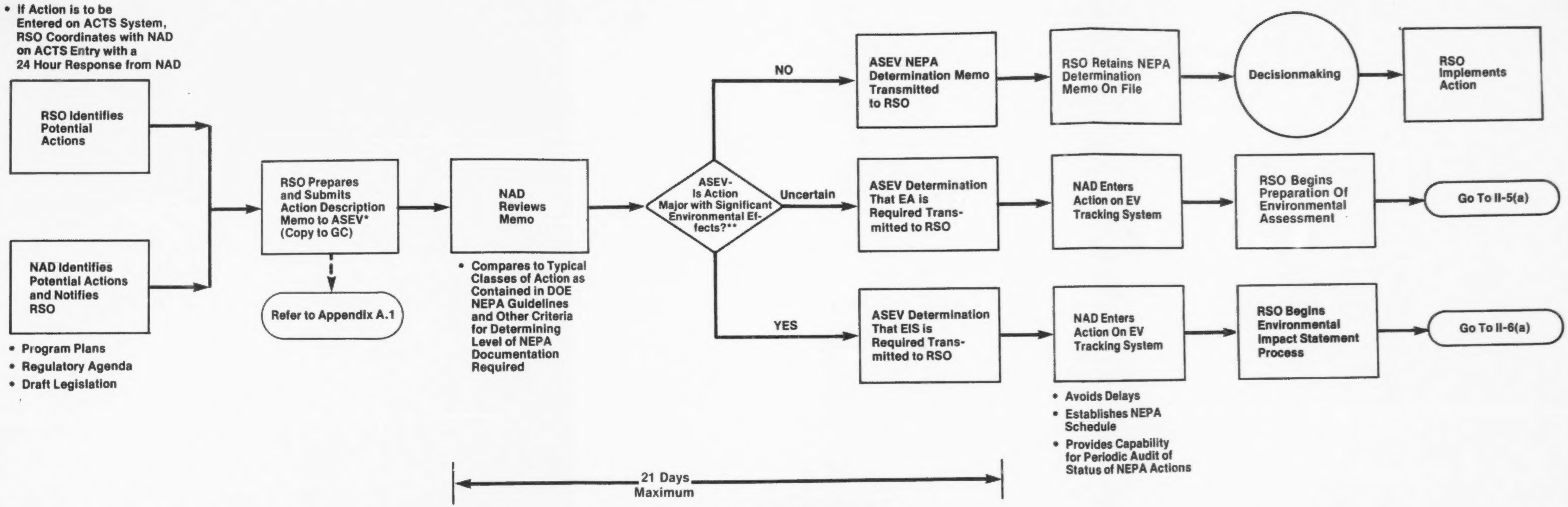
Note: NAD Will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-3
TYPICAL FLOW
OF THE NEPA
PROCESS FOR INTERNATIONAL
ACTIONS
(REFERENCE E.O. 12114
AND DOE IMPLEMENTING
GUIDELINES)


Decisionmaking
Consult With Department of State Regarding Notice to Foreign Nation
Notify Other Appropriate Federal Agencies of Document Availability
Notify Public of Document Availability
• If Affected Nation Desires
RSO Prepares FEIS
Internal Document Review
Consult With Department of State Regarding Notice to Foreign Nation
Circulate FEIS Among Federal Agencies
Notify Public of Document Availability

Note: NAD Will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-4
IDENTIFY ACTION AND MAKE DETERMINATION OF NEPA DOCUMENTATION REQUIRED


• If Action is to be Entered on ACTS System, RSO Coordinates with NAD on ACTS Entry with a 24 Hour Response from NAD
RSO Identifies Potential Actions
NAD Identifies Potential Actions and Notifies RSO
• Program Plans
• Regulatory Agenda
• Draft Legislation
RSO Prepares and Submits Action Description Memo to ASEV* (Copy to GC)
Refer to Appendix A.1
NAD Reviews Memo
• Compares to Typical Classes of Action as Contained in DOE NEPA Guidelines and Other Criteria for Determining Level of NEPA Documentation Required
ASEV- Is Action Major with Significant Environmental Effects?**
NO
Uncertain
YES
ASEV NEPA Determination Memo Transmitted to RSO
RSO Retains NEPA Determination Memo On File
Decisionmaking
RSO Implements Action
ASEV Determination That EA is Required Transmitted to RSO
NAD Enters Action on EV Tracking System
RSO Begins Preparation Of Environmental Assessment
Go To II-5(a)
ASEV Determination That EIS is Required Transmitted to RSO
NAD Enters Action On EV Tracking System
RSO Begins Environmental Impact Statement Process
Go To II-6(a)
• Avoids Delays
• Establishes NEPA Schedule
• Provides Capability for Periodic Audit of Status of NEPA Actions
21 Days Maximum

*Applicants for a DOE Lease, Permit, License, Certificate, Financial Assistance, Allocation, Exemption or Similar Action Should Consult With DOE as Early as Possible in Their Planning Processes to Obtain Guidance With Respect to the Appropriate Level and Scope of Any Studies or Environmental Information Which DOE May Require to be Submitted as Part or in Support of Their Application.

**After Consultation With GC.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

Legend:

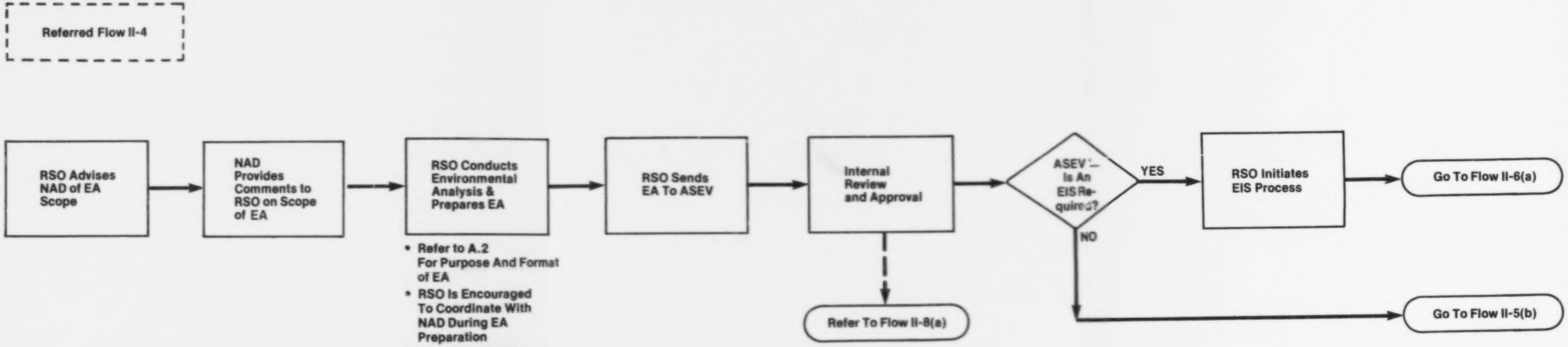
ACTS—Action Coordination Tracking System
RSO—Responsible Supervisory Official
NAD—NEPA Affairs Division
ASEV—Assistant Secretary for Environment
GC—General Counsel

Legend (cont.):

EA—Environmental Assessment
EIS—Environmental Impact Statement
EV—Office of Environment
NEPA—National Environmental Policy Act
DOE—U.S. Department of Energy

FLOW II-5(a)
ENVIRONMENTAL ASSESSMENT

FLOW II-5(a)
PREPARE ENVIRONMENTAL ASSESSMENT


Referred Flow II-4
RSO Advises NAD of EA Scope
NAD Provides Comments to RSO on Scope of EA
RSO Conducts Environmental Analysis & Prepares EA
RSO Sends EA To ASEV
Internal Review and Approval
Refer To Flow II-8(a)
ASEV*— Is An EIS Required?
YES
NO
RSO Initiates EIS Process
Go To Flow II-6(a)
Go To Flow II-5(b)

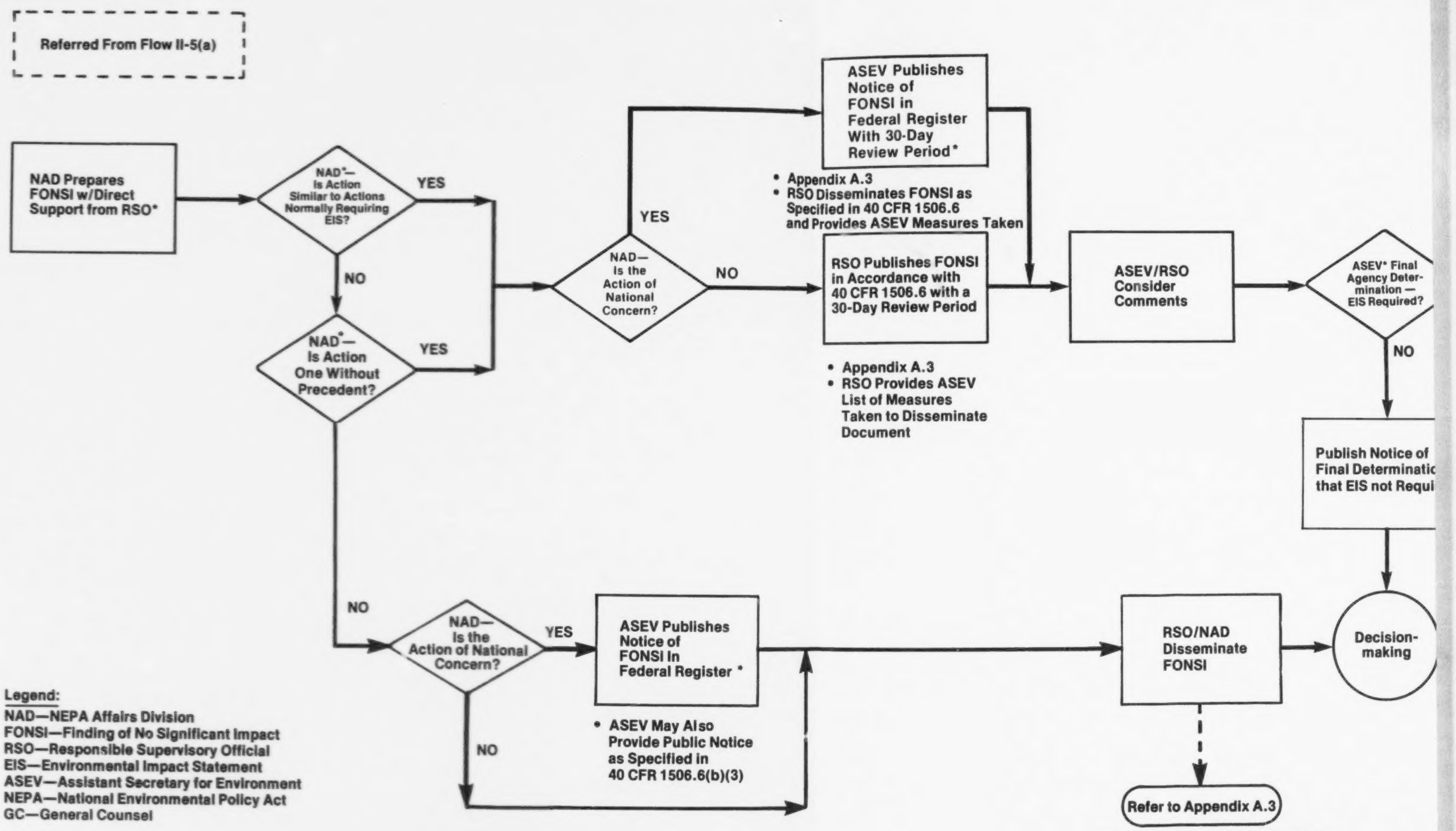
- Refer to A.2 For Purpose And Format of EA
- RSO Is Encouraged To Coordinate With NAD During EA Preparation
- RSO Consults With Other Agencies And Interested Parties As Appropriate

Legend:
RSO—Responsible Supervisory Official
NAD—NEPA Affairs Division
EA—Environmental Assessment
ASEV—Assistant Secretary for Environment
GC— General Counsel
EIS—Environmental Impact Statement

*After Consultation with GC.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-5(b)
FINDING OF NO SIGNIFICANT IMPACT


Referred From Flow II-5(a)
NAD Prepares FONSI w/Direct Support from RSO*
NAD*— Is Action Similar to Actions Normally Requiring EIS?
YES
NO
NAD*— Is Action One Without Precedent?
YES
NO
NAD— Is the Action of National Concern?
YES
NO
ASEV Publishes Notice of FONSI in Federal Register With 30-Day Review Period*
• Appendix A.3
• RSO Disseminates FONSI as Specified in 40 CFR 1506.6 and Provides ASEV Measures Taken
RSO Publishes FONSI in Accordance with 40 CFR 1506.6 with a 30-Day Review Period
• Appendix A.3
• RSO Provides ASEV List of Measures Taken to Disseminate Document
ASEV/RSO Consider Comments
ASEV* Final Agency Determination — EIS Required?
NO
Publish Notice of Final Determinatic that EIS not Requi
NAD— Is the Action of National Concern?
YES
NO
ASEV Publishes Notice of FONSI In Federal Register *
• ASEV May Also Provide Public Notice as Specified in 40 CFR 1506.6(b)(3)
RSO/NAD Disseminate FONSI
Decision-making
Refer to Appendix A.3

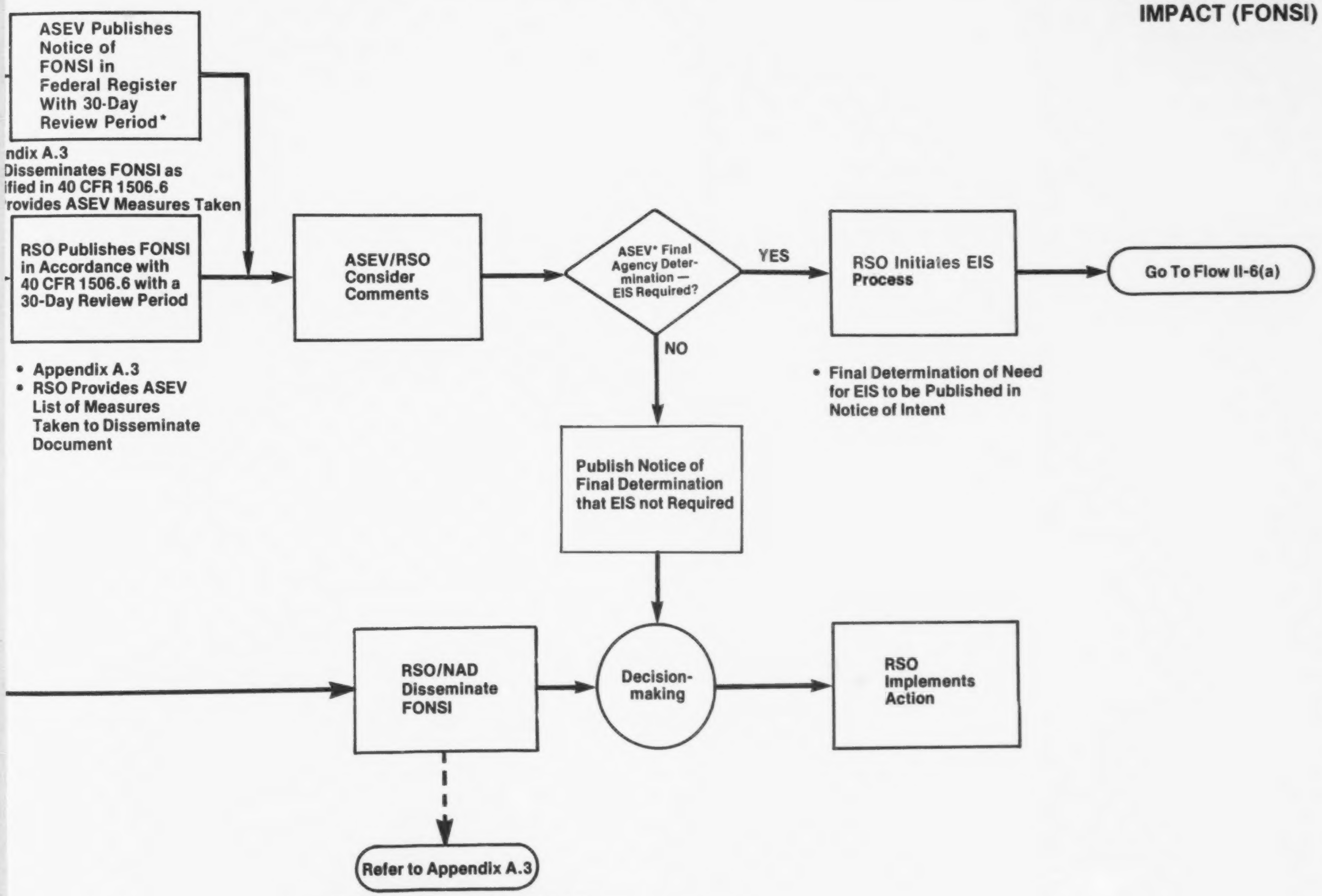
Legend:

NAD—NEPA Affairs Division
FONSI—Finding of No Significant Impact
RSO—Responsible Supervisory Official
EIS—Environmental Impact Statement
ASEV—Assistant Secretary for Environment
NEPA—National Environmental Policy Act
GC—General Counsel

*After Consultation With GC.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

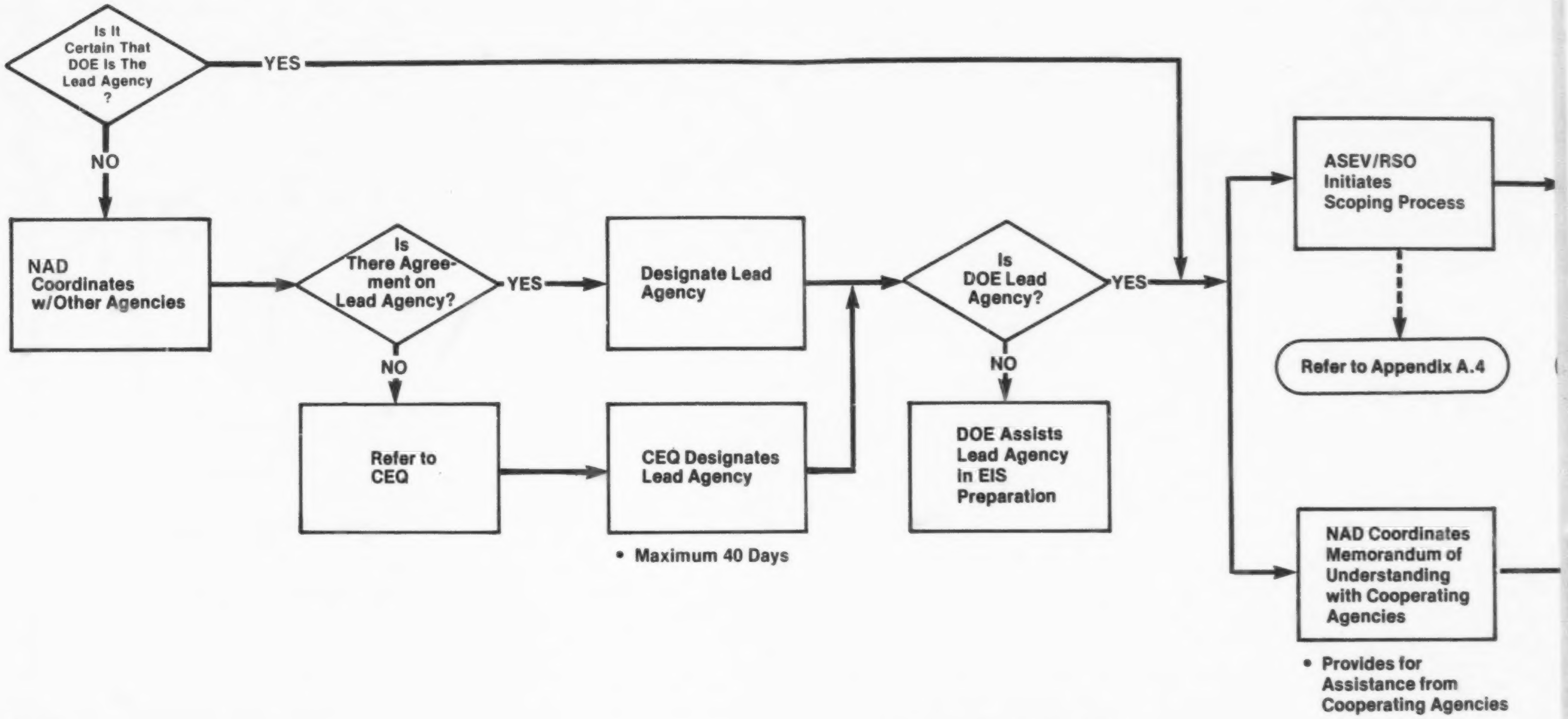
FLOW II-5(b)
PREPARE FINDING OF NO SIGNIFICANT IMPACT (FONSI)


ASEV Publishes Notice of FONSI in Federal Register With 30-Day Review Period*
ndix A.3
Disseminates FONSI as
ified in 40 CFR 1506.6
rovides ASEV Measures Taken
RSO Publishes FONSI in Accordance with 40 CFR 1506.6 with a 30-Day Review Period
• Appendix A.3
• RSO Provides ASEV List of Measures Taken to Disseminate Document
ASEV/RSO Consider Comments
ASEV* Final Agency Determination — EIS Required?
YES
NO
RSO Initiates EIS Process
Go To Flow II-6(a)
• Final Determination of Need for EIS to be Published in Notice of Intent
Publish Notice of Final Determination that EIS not Required
RSO/NAD Disseminate FONSI
Decision-making
RSO Implements Action
Refer to Appendix A.3

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-6(a)
INITIATE ENVIRONMENTAL
IMPACT STATEMENT PROCESS

Referred From Flows:
II-4
II-5(b)

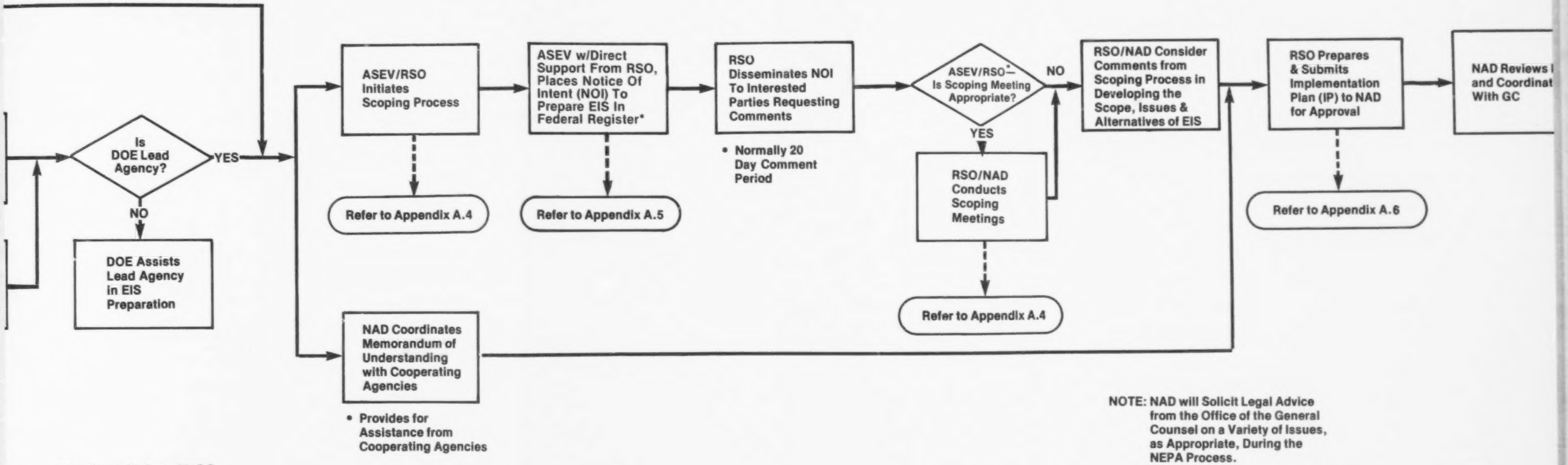

Is It Certain That DOE Is The Lead Agency ?
YES
NO
NAD Coordinates w/Other Agencies
Is There Agreement on Lead Agency?
YES
NO
Designate Lead Agency
Refer to CEQ
CEQ Designates Lead Agency
• Maximum 40 Days
Is DOE Lead Agency?
YES
NO
DOE Assists Lead Agency in EIS Preparation
ASEV/RSO Initiates Scoping Process
Refer to Appendix A.4
NAD Coordinates Memorandum of Understanding with Cooperating Agencies
• Provides for Assistance from Cooperating Agencies

*After Consultation with GC.

Legend:

DOE—U.S. Department of Energy
NAD—NEPA Affairs Division
CEQ—Council on Environmental Quality
EIS—Environmental Impact Statement
ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
IP—Implementation Plan

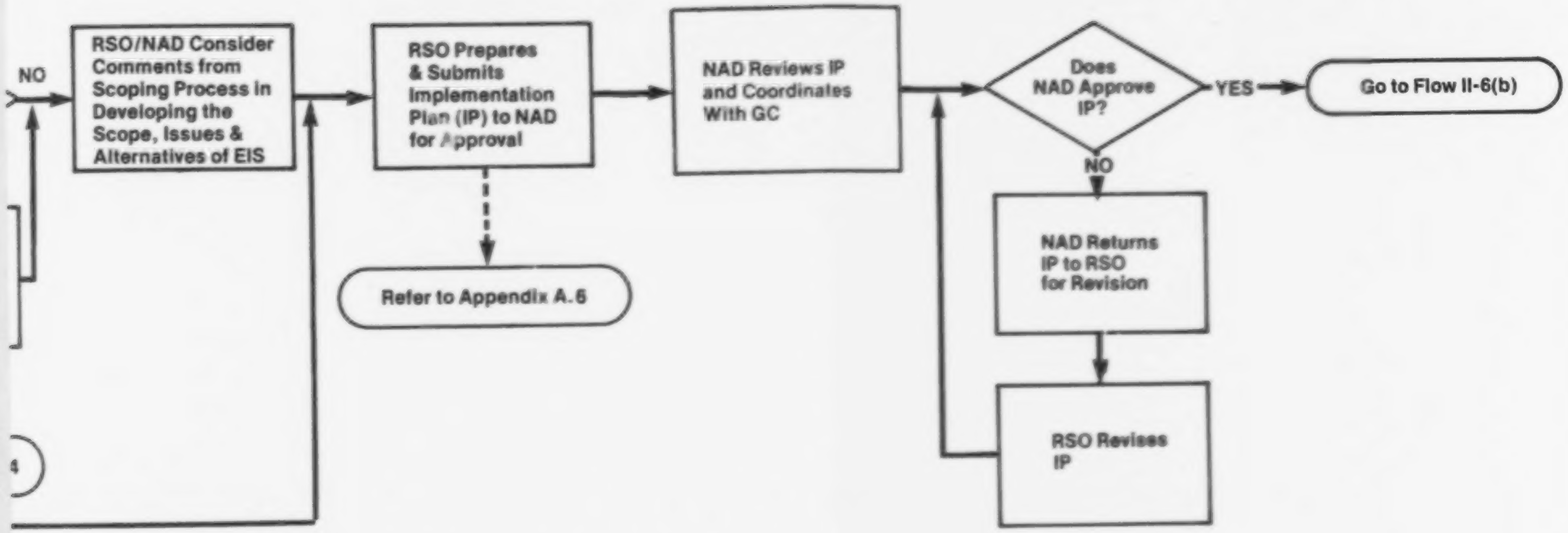
ASEV/RSO-ASEV Has Lead Responsibility;
RSO Has Assistance Responsibility
RSO/NAD—RSO Has Lead Responsibility;
NAD Has Assistance Responsibility
GC—General Counsel


Is DOE Lead Agency?
YES
NO
DOE Assists Lead Agency in EIS Preparation
ASEV/RSO Initiates Scoping Process
Refer to Appendix A.4
ASEV w/Direct Support From RSO, Places Notice Of Intent (NOI) To Prepare EIS In Federal Register*
Refer to Appendix A.5
RSO Disseminates NOI To Interested Parties Requesting Comments
• Normally 20 Day Comment Period
ASEV/RSO— Is Scoping Meeting Appropriate?
NO
YES
RSO/NAD Conducts Scoping Meetings
Refer to Appendix A.4
RSO/NAD Consider Comments from Scoping Process in Developing the Scope, Issues & Alternatives of EIS
RSO Prepares & Submits Implementation Plan (IP) to NAD for Approval
Refer to Appendix A.6
NAD Reviews I and Coordinat With GC
NAD Coordinates Memorandum of Understanding with Cooperating Agencies
• Provides for Assistance from Cooperating Agencies

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

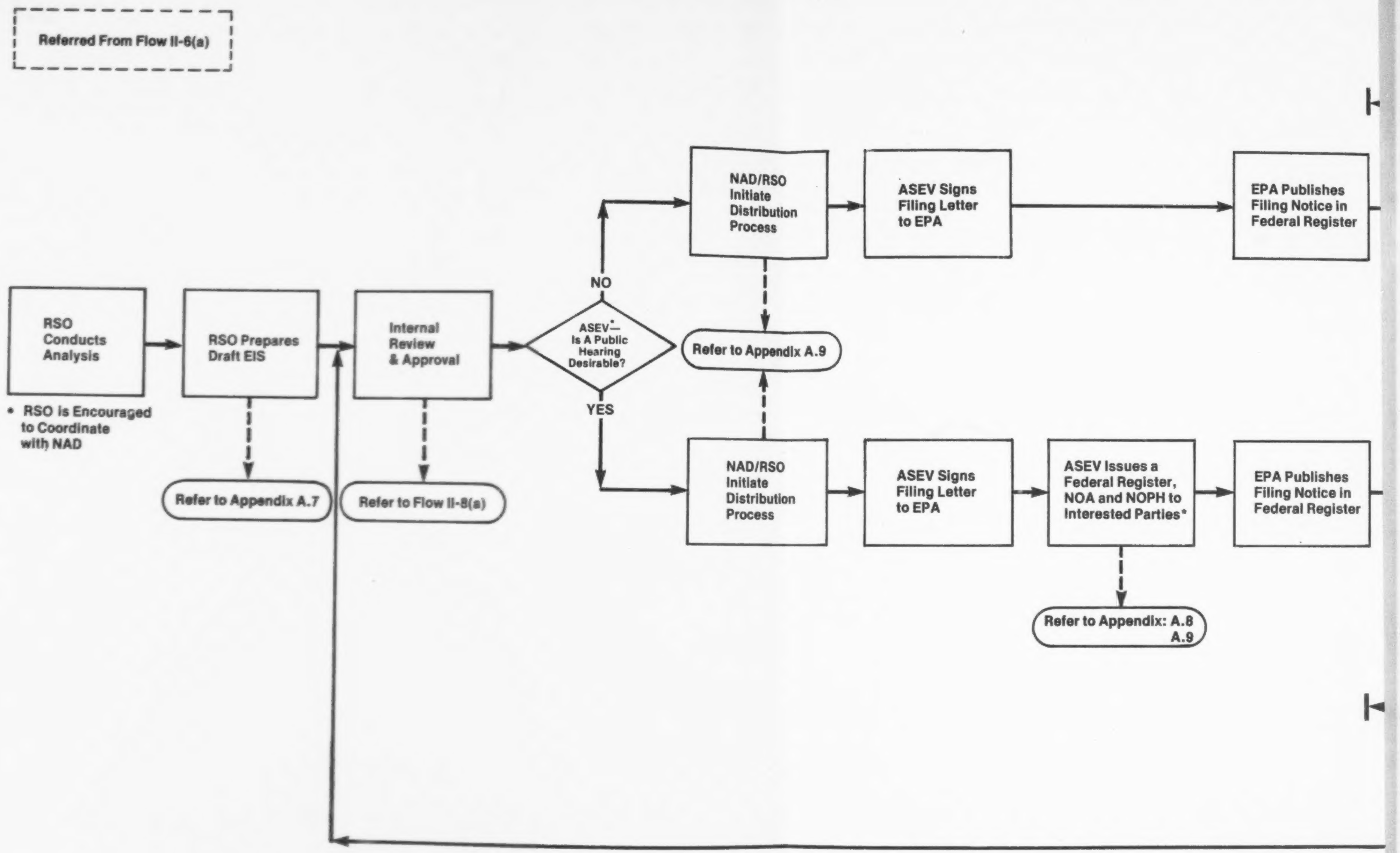
*After Consultation with GC.

FLOW II-6(a)
INITIATE ENVIRONMENTAL IMPACT STATEMENT (EIS) PREPARATION


NO
RSO/NAD Consider Comments from Scoping Process in Developing the Scope, Issues & Alternatives of EIS
RSO Prepares & Submits Implementation Plan (IP) to NAD for Approval
Refer to Appendix A.6
NAD Reviews IP and Coordinates With GC
Does NAD Approve IP?
YES
Go to Flow II-6(b)
NO
NAD Returns IP to RSO for Revision
RSO Revises IP
4

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-6(b)
PREPARE ENVIRONMENTAL IMPACT STATEMENT


Referred From Flow II-6(a)
RSO Conducts Analysis
• RSO is Encouraged to Coordinate with NAD
RSO Prepares Draft EIS
Refer to Appendix A.7
Internal Review & Approval
Refer to Flow II-8(a)
ASEV*— Is A Public Hearing Desirable?
NO
YES
NAD/RSO Initiate Distribution Process
ASEV Signs Filing Letter to EPA
EPA Publishes Filing Notice in Federal Register
Refer to Appendix A.9
NAD/RSO Initiate Distribution Process
ASEV Signs Filing Letter to EPA
ASEV Issues a Federal Register, NOA and NOPH to Interested Parties*
EPA Publishes Filing Notice in Federal Register
Refer to Appendix: A.8 A.9

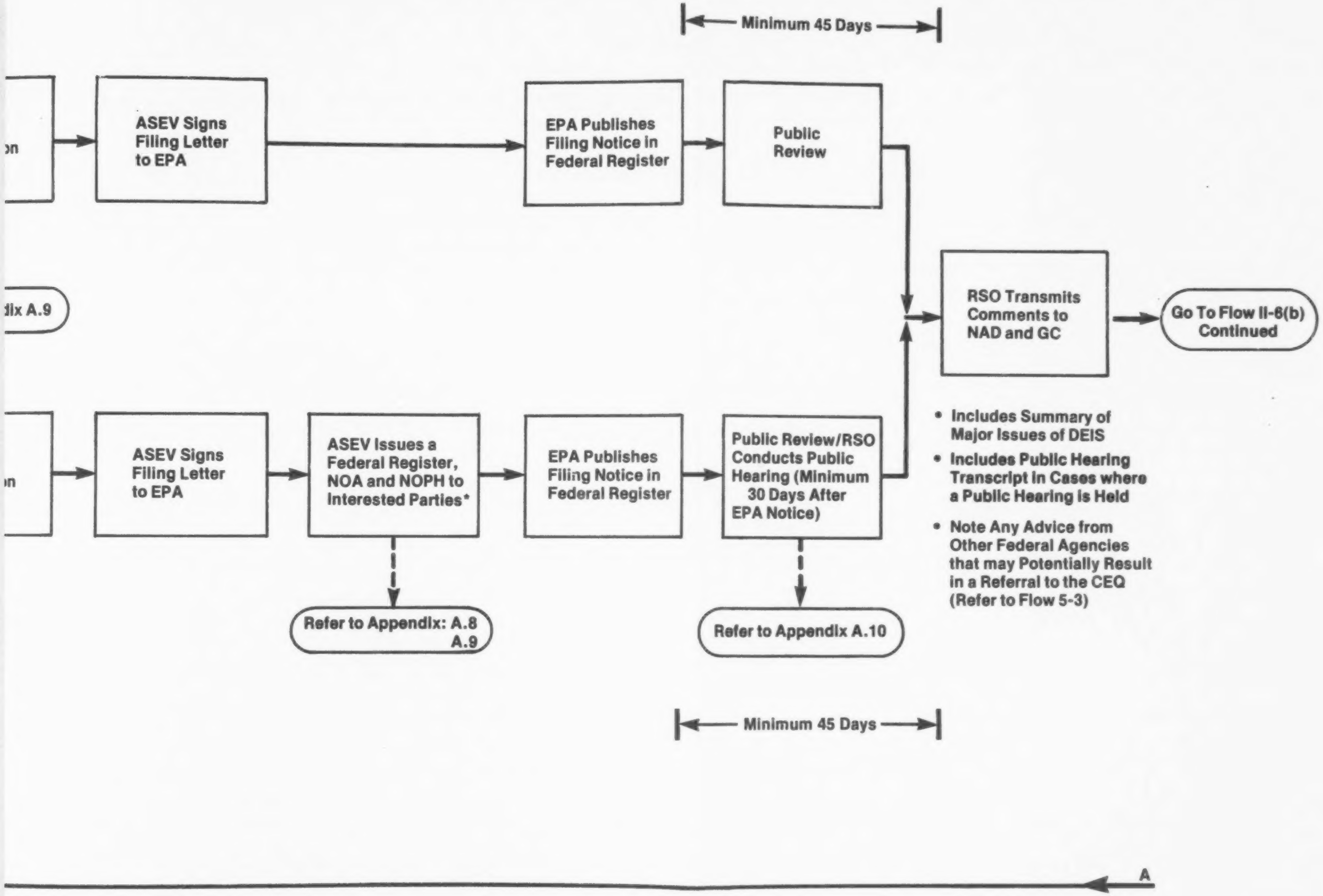
Legend:
RSO—Responsible Supervisory Official
NAD—NEPA Affairs Division
EIS—Environmental Impact Statement
ASEV—Assistant Secretary for Environment
EPA—U.S. Environmental Protection Agency

Legend (cont.):
NOA—Notice of Availability
NOPH—Notice of Public Hearing
GC—General Counsel
CEQ—Council on Environmental Quality
DEIS—Draft Environmental Impact Statement
NAD/RSO—NAD Has Lead Responsibility;
RSO Has Assistance Responsibility

*After Consultation with GC and RSO.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-6(b)
PREPARE ENVIRONMENTAL IMPACT STATEMENT


Minimum 45 Days
on
ASEV Signs Filing Letter to EPA
EPA Publishes Filing Notice in Federal Register
Public Review
dix A.9
RSO Transmits Comments to NAD and GC
Go To Flow II-6(b) Continued
on
ASEV Signs Filing Letter to EPA
ASEV Issues a Federal Register, NOA and NOPH to Interested Parties*
EPA Publishes Filing Notice in Federal Register
Public Review/RSO Conducts Public Hearing (Minimum 30 Days After EPA Notice)
Refer to Appendix: A.8 A.9
Refer to Appendix A.10
Minimum 45 Days
A

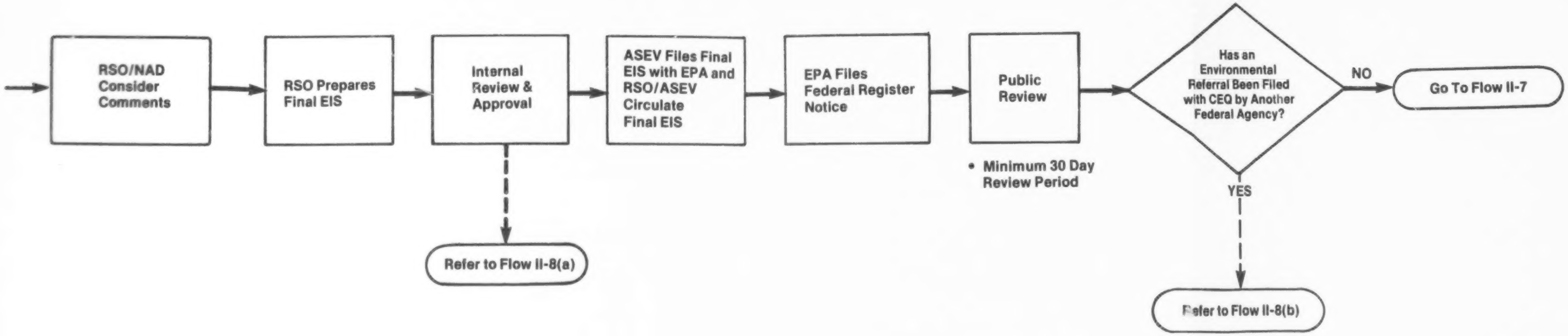
- Includes Summary of Major Issues of DEIS
- Includes Public Hearing Transcript in Cases where a Public Hearing is Held
- Note Any Advice from Other Federal Agencies that may Potentially Result in a Referral to the CEQ (Refer to Flow 5-3)

onsultation with GC and RSO.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

Continued From
Flow II-6(b)

FLOW II-6(b) (Cont.)
PREPARE ENVIRONMENTAL IMPACT STATEMENT

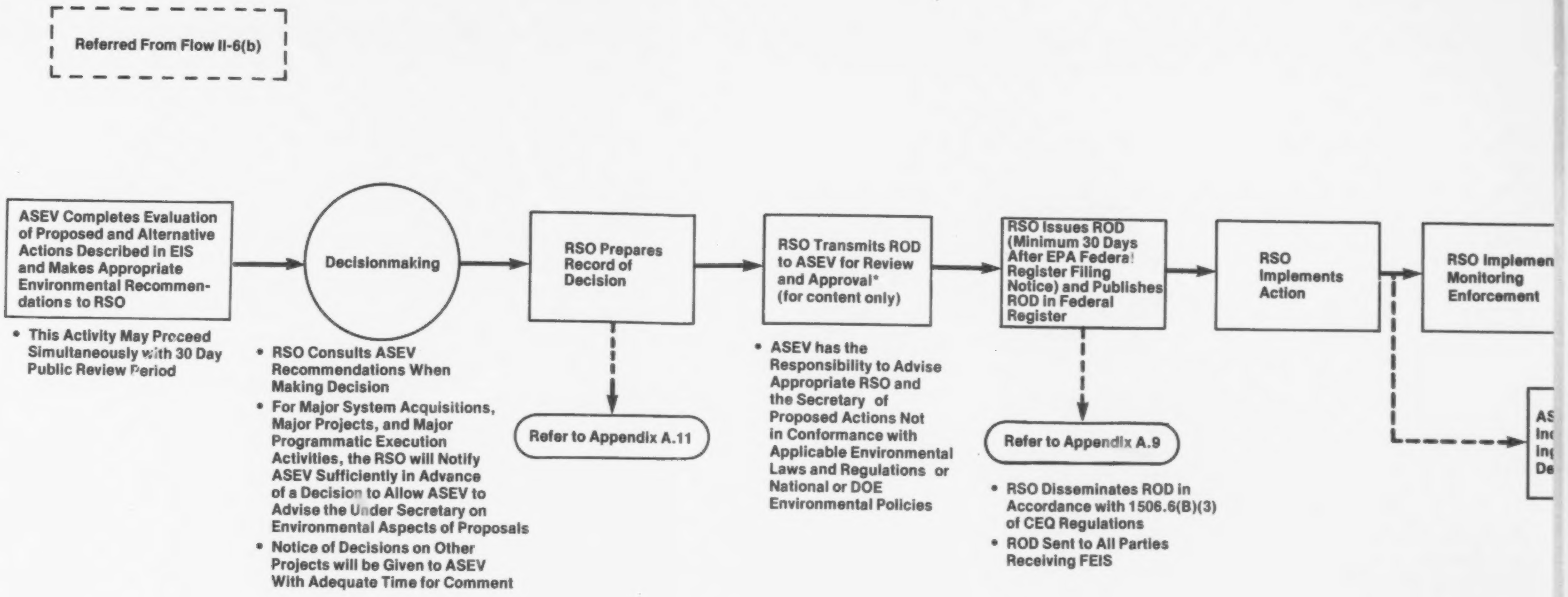

RSO/NAD Consider Comments
RSO Prepares Final EIS
Internal Review & Approval
ASEV Files Final EIS with EPA and RSO/ASEV Circulate Final EIS
EPA Files Federal Register Notice
Public Review
• Minimum 30 Day Review Period
Has an Environmental Referral Been Filed with CEQ by Another Federal Agency?
NO
Go To Flow II-7
YES
Refer to Flow II-8(a)
Refer to Flow II-8(b)

Legend:
RSO—Responsible Supervisory Official
NAD—NEPA Affairs Division
ASEV—Assistant Secretary for Environment
EIS—Environmental Impact Statement
EPA—Environmental Protection Agency
CEQ—Council on Environmental Quality

Legend (cont.):
GC—General Counsel
RSO/NAD—RSO Has Lead Responsibility;
NAD Has Assistance Responsibility
RSO/ASEV—RSO Has Lead Responsibility;
ASEV Has Assistance Responsibility

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-7
DECISION MAKING/FOLLOW-UP


Referred From Flow II-6(b)
ASEV Completes Evaluation of Proposed and Alternative Actions Described in EIS and Makes Appropriate Environmental Recommendations to RSO
Decisionmaking
RSO Prepares Record of Decision
Refer to Appendix A.11
RSO Transmits ROD to ASEV for Review and Approval* (for content only)
RSO Issues ROD (Minimum 30 Days After EPA Federal Register Filing Notice) and Publishes ROD in Federal Register
Refer to Appendix A.9
RSO Implements Action
RSO Implemen Monitoring Enforcement
AS
Inc
Ing
De

- This Activity May Proceed Simultaneously with 30 Day Public Review Period

- RSO Consults ASEV Recommendations When Making Decision
- For Major System Acquisitions, Major Projects, and Major Programmatic Execution Activities, the RSO will Notify ASEV Sufficiently in Advance of a Decision to Allow ASEV to Advise the Under Secretary on Environmental Aspects of Proposals
- Notice of Decisions on Other Projects will be Given to ASEV With Adequate Time for Comment

- ASEV has the Responsibility to Advise Appropriate RSO and the Secretary of Proposed Actions Not in Conformance with Applicable Environmental Laws and Regulations or National or DOE Environmental Policies

- RSO Disseminates ROD in Accordance with 1506.6(B)(3) of CEQ Regulations
- ROD Sent to All Parties Receiving FEIS

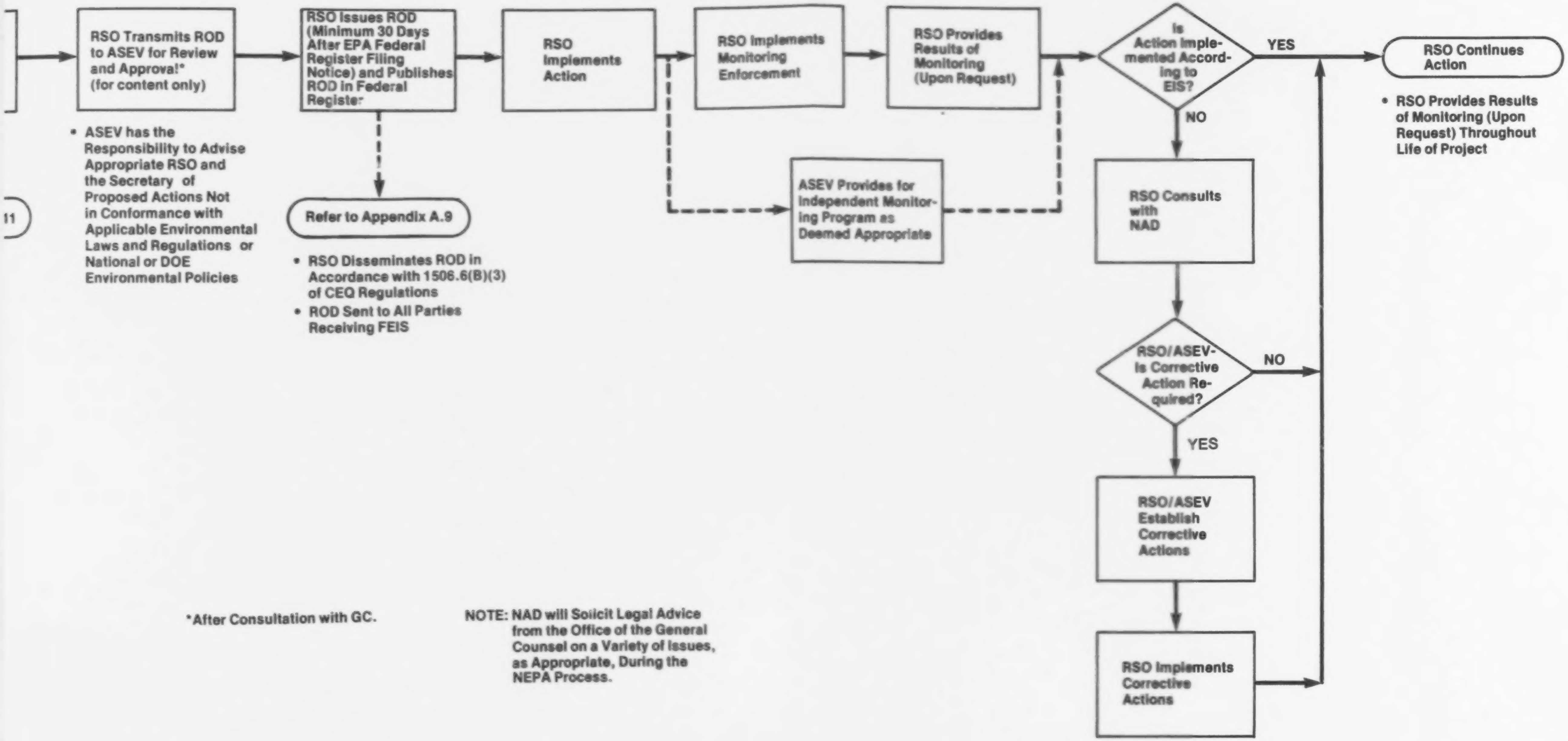
Legend:

ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
EIS—Environmental Impact Statement
ROD—Record of Decision
DOE—U.S. Department of Energy
EPA—U.S. Environmental Protection Agency
NAD—NEPA Affairs Division
NEPA—National Environmental Policy Act
RSO/ASEV—RSO Has Lead Responsibility; ASEV Has Assistance Responsibility

*After Consultation with GC.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-7
DECISIONMAKING AND NEPA FOLLOW-UP


11
RSO Transmits ROD to ASEV for Review and Approval* (for content only)
RSO Issues ROD (Minimum 30 Days After EPA Federal Register Filing Notice) and Publishes ROD in Federal Register
Refer to Appendix A.9
RSO Implements Action
RSO Implements Monitoring Enforcement
ASEV Provides for Independent Monitoring Program as Deemed Appropriate
RSO Provides Results of Monitoring (Upon Request)
Is Action Implemented According to EIS?
YES
NO
RSO Continues Action
RSO Consults with NAD
RSO/ASEV-Is Corrective Action Required?
NO
YES
RSO/ASEV Establish Corrective Actions
RSO Implements Corrective Actions

- ASEV has the Responsibility to Advise Appropriate RSO and the Secretary of Proposed Actions Not in Conformance with Applicable Environmental Laws and Regulations or National or DOE Environmental Policies

- RSO Disseminates ROD in Accordance with 1506.6(B)(3) of CEQ Regulations
- ROD Sent to All Parties Receiving FEIS

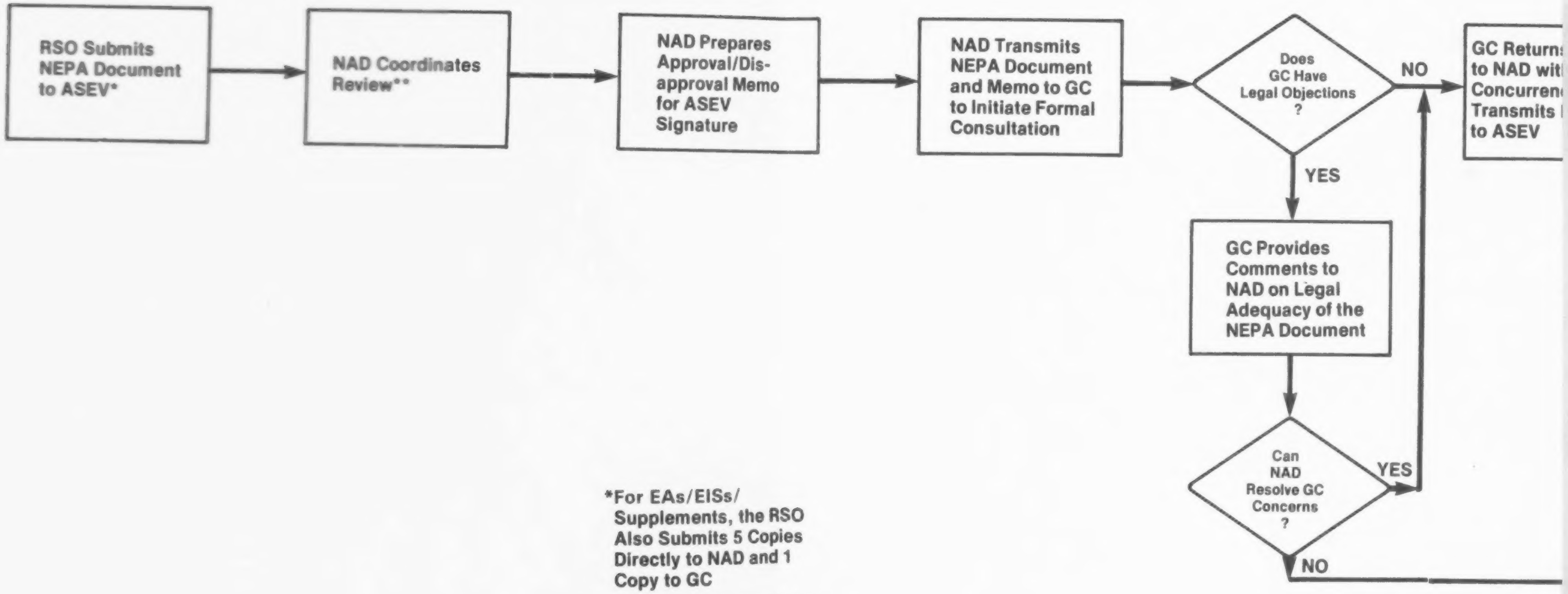
- RSO Provides Results of Monitoring (Upon Request) Throughout Life of Project

*After Consultation with GC.

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-8(a)
INTERNAL REVIEW AND APPROVAL PROCEDURES

Referred From Flows: II-5(a)
II-6(b)
II-7


RSO Submits NEPA Document to ASEV*
NAD Coordinates Review**
NAD Prepares Approval/Disapproval Memo for ASEV Signature
NAD Transmits NEPA Document and Memo to GC to Initiate Formal Consultation
Does GC Have Legal Objections ?
NO
GC Return
to NAD wit
Concurren
Transmits
to ASEV
YES
GC Provides Comments to NAD on Legal Adequacy of the NEPA Document
Can NAD Resolve GC Concerns ?
YES
NO

*For EAs/EISs/ Supplements, the RSO Also Submits 5 Copies Directly to NAD and 1 Copy to GC

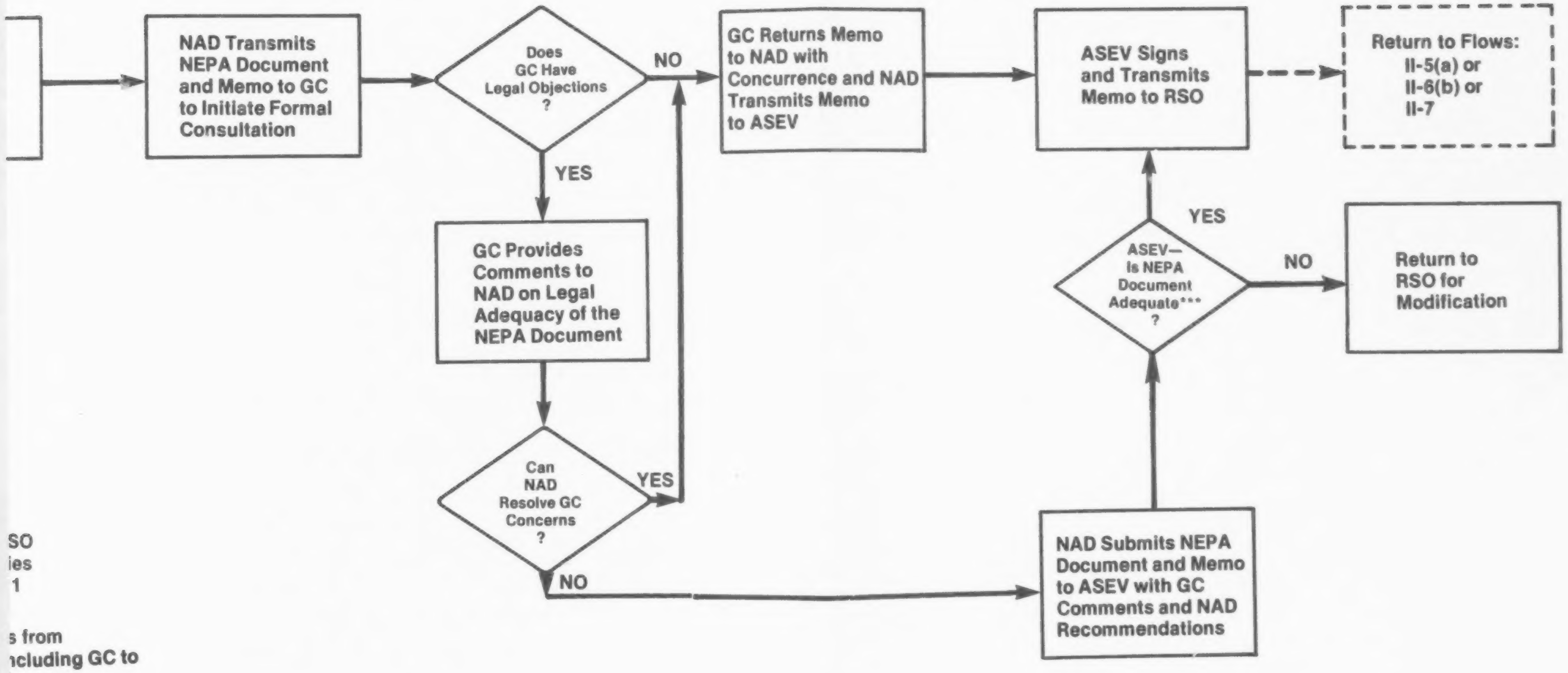
**Requests Comments from Other DOE Offices Including GC to Supplement Its Review, as Appropriate

***Unresolvable Issues Regarding Issuance of NEPA Documents at the Assistant Secretary/General Counsel Level are Subject to Review and Resolution by the Secretary

Legend:
RSO—Responsible Supervisory Official
NEPA—National Environmental Policy Act
ASEV—Assistant Secretary for Environment

Legend (cont.):
NAD—NEPA Affairs Division
GC—General Counsel

FLOW II-8(a)
INTERNAL REVIEW AND APPROVAL PROCESS


NAD Transmits NEPA Document and Memo to GC to Initiate Formal Consultation
Does GC Have Legal Objections ?
NO
YES
GC Returns Memo to NAD with Concurrence and NAD Transmits Memo to ASEV
ASEV Signs and Transmits Memo to RSO
Return to Flows: II-5(a) or II-6(b) or II-7
GC Provides Comments to NAD on Legal Adequacy of the NEPA Document
YES
ASEV— Is NEPA Document Adequate*** ?
NO
Return to RSO for Modification
Can NAD Resolve GC Concerns ?
YES
NO
NAD Submits NEPA Document and Memo to ASEV with GC Comments and NAD Recommendations

SO
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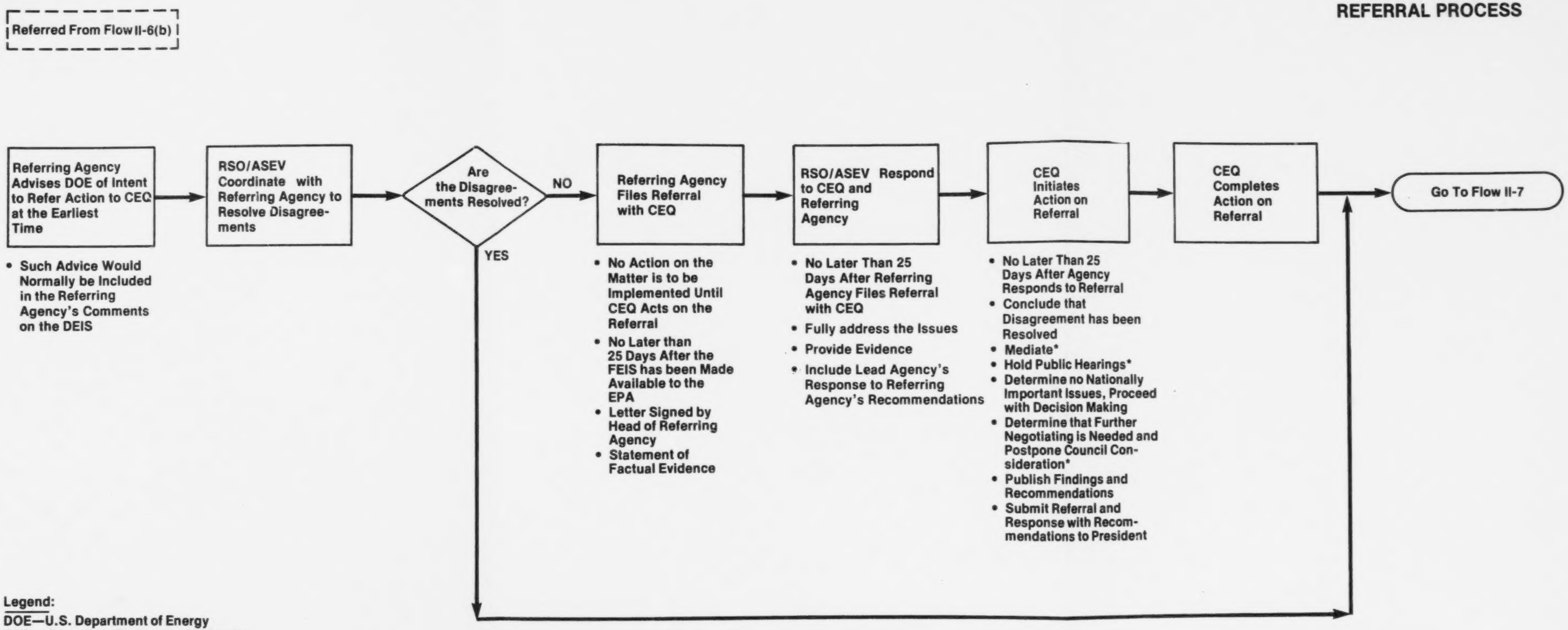
Regarding
ocuments at the
/General Counsel Level
w and Resolution

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

FLOW II-8(b)
REFERRAL PROCESS

FLOW II-8(b)
REFERRAL PROCESS


Referred From Flow II-6(b)
Referring Agency Advises DOE of Intent to Refer Action to CEQ at the Earliest Time
RSO/ASEV Coordinate with Referring Agency to Resolve Disagreements
Are the Disagreements Resolved?
NO
YES
Referring Agency Files Referral with CEQ
RSO/ASEV Respond to CEQ and Referring Agency
CEQ Initiates Action on Referral
CEQ Completes Action on Referral
Go To Flow II-7

- Such Advice Would Normally be Included in the Referring Agency's Comments on the DEIS

- No Action on the Matter is to be Implemented Until CEQ Acts on the Referral
- No Later than 25 Days After the FEIS has been Made Available to the EPA
- Letter Signed by Head of Referring Agency
- Statement of Factual Evidence

- No Later Than 25 Days After Referring Agency Files Referral with CEQ
- Fully address the Issues
- Provide Evidence
- Include Lead Agency's Response to Referring Agency's Recommendations

- No Later Than 25 Days After Agency Responds to Referral
- Conclude that Disagreement has been Resolved
- Mediate*
- Hold Public Hearings*
- Determine no Nationally Important Issues, Proceed with Decision Making
- Determine that Further Negotiating is Needed and Postpone Council Consideration*
- Publish Findings and Recommendations
- Submit Referral and Response with Recommendations to President

Legend:
DOE—U.S. Department of Energy
CEQ—Council on Environmental Quality
RSO—Responsible Supervisory Official
ASEV—Assistant Secretary for Environment
DEIS—Draft Environmental Impact Statement
FEIS—Final Environmental Impact Statement
EPA—U.S. Environmental Protection Agency
RSO/ASEV—RSO Has Lead Responsibility;
ASEV Has Assistance Responsibility

*The Council Shall Take No Longer than 60 Days to Complete These Actions

NOTE: NAD will Solicit Legal Advice from the Office of the General Counsel on a Variety of Issues, as Appropriate, During the NEPA Process.

PART III.
COMPLIANCE WITH OTHER FEDERAL ENVIRONMENTAL STATUTES

PART III. COMPLIANCE WITH OTHER FEDERAL ENVIRONMENTAL STATUTES

The flowcharts contained in Part III are designed to be used in conjunction with the implementing regulations found in Volume II. Each chart depicts step-by-step procedures required for compliance with those sections of a given implementing regulation pertaining to permits, coordination, or consultation requirements. Enforcement and other provisions not normally impacting DOE implementation of a proposed action have been omitted. The flowcharts generally reflect the situation where DOE has either prepared or is in the process of preparing an EIS. Some deviation from the sequences depicted in the flowcharts may occur in these instances where an EIS is not required. Milestone charts have also been added where applicable showing the general sequential relationship of the regulation and NEPA.

Part III flowcharts are not intended to eliminate the need for the Responsible Supervisory Official (RSO) and others to become familiar with the contents of the regulations, but rather to assist them in rapidly gaining an understanding of the pertinent points of each. Governing regulations should be consulted frequently in all cases to ensure proper compliance.

Flowcharts have been prepared for compliance with

TAB	
III-1.	Clean Air Act of 1963, as amended
III-2.	Clean Water Act of 1977
III-3.	Corps of Engineers Permits
III-4.	Floodplain/Wetlands Regulations 10 CFR 1022
III-5.	Coastal Zone Management Act of 1972, as amended
III-6.	Endangered Species Act of 1973, as amended
III-7.	Fish and Wildlife Coordination Act of 1934, as amended
III-8.	Wild and Scenic Rivers Act of 1968, as amended
III-9.	National and Historic Preservation Act of 1966, as amended
III-10.	Federal Nonnuclear Research and Development Act of 1974
III-11.	Resource Conservation and Recovery Act of 1976
III-12.	Safe Drinking Water Act of 1974

The milestone charts included with the Part III flowcharts graphically illustrate the coordination of the particular environmental requirement with NEPA and when used in conjunction with the general planning principles presented in Part I, Section A, will assist in the development of an environmental compliance plan. The RSO should conduct an initial screening of Federal environmental regulations as early as possible in the project development process to enable these requirements and those of NEPA to be included in the overall project planning process.

A series of questions are posed at the end of this introduction to assist the user in determining which regulations, and included flowcharts, are applicable to the proposed action. Once the applicable environmental regulations have been tentatively identified, the charts can be used to

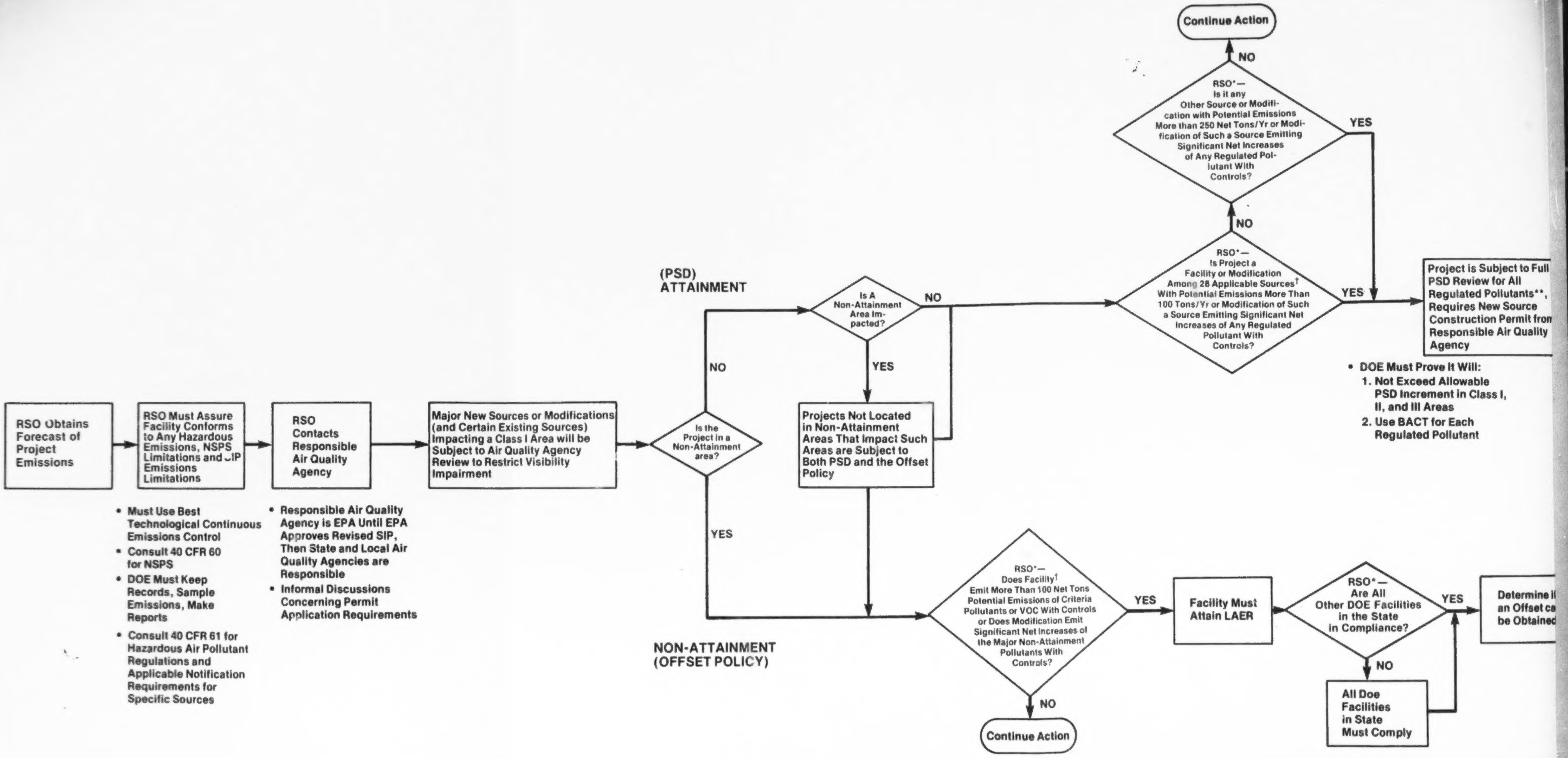
- Affirm the applicability of specific environmental regulations
- Assist in the understanding of the implementing regulations
- Determine the activities required for compliance with the regulations
- Determine the sequence and timing of activities
- Determine the relationship of the regulations to the NEPA process
- Identify other "environmental" documents that might be needed or should be incorporated within the EIS
- Identify agency coodination requirements
- Identify restrictions that have the potential for delaying or halting the project
- Determine approximate time required for compliance
- Identify the regulatory/consulting agency

PRELIMINARY SCREENING FOR DETERMINING THE APPLICABILITY OF OTHER FEDERAL ENVIRONMENTAL REGULATIONS

	QUESTION	IF YES, EXAMINE NEED FOR FOLLOWING PERMIT, CONSULTATION, OR REVIEW	FLOW CHART
1.	Does the project involve emissions of pollutants to the air?	PSD Permit, NSPS Permit possible	III-1
2.	Does the action involve the discharge of pollutants into a waterway of the U.S. or the ocean?	NPDES permit	III-2
3.	Will the project require the discharge of dredged or fill materials into waters of the U.S.?	Corps of Engineers Permit and State Water Quality Certification	III-3
4.	Does the project require structures (piers, power lines, etc.) or work such as dredging in navigable waters of the U.S.	Corps of Engineers Permit	III-3
5.	Is the action located within a floodplain or in a wetland area?	Floodplains/Wetlands Review	III-4
6.	Might the action impact a coastal zone area?	State Coastal Zone Management Consultations	III-5
7.	Are there any threatened or endangered species or their critical habitats located in the area of the proposed action?	Endangered Species Consultation	III-6
8.	Will the project modify or impact a waterway?	Fish and Wildlife Review	III-7
9.	Will the action affect a wild and scenic river area or areas designated as potential additions to the Wild and Scenic Rivers System?	Review by SEC/DOI or SEC/USDA	III-8

	QUESTION	IF YES, EXAMINE NEED FOR FOLLOWING PERMIT, CONSULTATION, OR REVIEW	FLOW CHART
10.	Are there historic sites in the project area?	Consultation with State HPO and ACHP	III-9
11.	Might the project have an effect on a water resource?	Water Resources Council Review	III-10
12.	Does the project require the handling, disposal, or transport of hazardous materials?	RCRA Permit	III-11
13.	Does the project involve the injection of a substance into the ground?	UIC Permit	III-12

FLOW III-1
CLEAN AIR (PSD)


RSO Obtains Forecast of Project Emissions
RSO Must Assure Facility Conforms to Any Hazardous Emissions, NSPS Limitations and SIP Emissions Limitations
RSO Contacts Responsible Air Quality Agency
Major New Sources or Modifications (and Certain Existing Sources) Impacting a Class I Area will be Subject to Air Quality Agency Review to Restrict Visibility Impairment
Is the Project in a Non-Attainment area?
NO
YES
(PSD) ATTAINMENT
Is A Non-Attainment Area Impacted?
NO
YES
Projects Not Located in Non-Attainment Areas That Impact Such Areas are Subject to Both PSD and the Offset Policy
RSO*— Is Project a Facility or Modification Among 28 Applicable Sources† With Potential Emissions More Than 100 Tons/Yr or Modification of Such a Source Emitting Significant Net Increases of Any Regulated Pollutant With Controls?
NO
RSO*— Is it any Other Source or Modification with Potential Emissions More than 250 Net Tons/Yr or Modification of Such a Source Emitting Significant Net Increases of Any Regulated Pollutant With Controls?
NO
Continue Action
YES
YES
Project is Subject to Full PSD Review for All Regulated Pollutants**, Requires New Source Construction Permit fro Responsible Air Quality Agency
NON-ATTAINMENT (OFFSET POLICY)
RSO*— Does Facility† Emit More Than 100 Net Tons Potential Emissions of Criteria Pollutants or VOC With Controls or Does Modification Emit Significant Net Increases of the Major Non-Attainment Pollutants With Controls?
NO
Continue Action
YES
Facility Must Attain LAER
RSO*— Are All Other DOE Facilities in the State in Compliance?
YES
NO
All Doe Facilities in State Must Comply
Determine i an Offset ca be Obtaine

- Must Use Best Technological Continuous Emissions Control
- Consult 40 CFR 60 for NSPS
- DOE Must Keep Records, Sample Emissions, Make Reports
- Consult 40 CFR 61 for Hazardous Air Pollutant Regulations and Applicable Notification Requirements for Specific Sources

- Responsible Air Quality Agency is EPA Until EPA Approves Revised SIP, Then State and Local Air Quality Agencies are Responsible
- Informal Discussions Concerning Permit Application Requirements

- DOE Must Prove It Will:
  1. Not Exceed Allowable PSD Increment in Class I, II, and III Areas
  2. Use BACT for Each Regulated Pollutant

Legend:

ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
NSPS—New Source Performance Standards
SIP—State Implementation Plan

PSD—Prevention of Significant Deterioration
TSP—Total Suspended Particulates
NAAQS—National Ambient Air Quality Standards

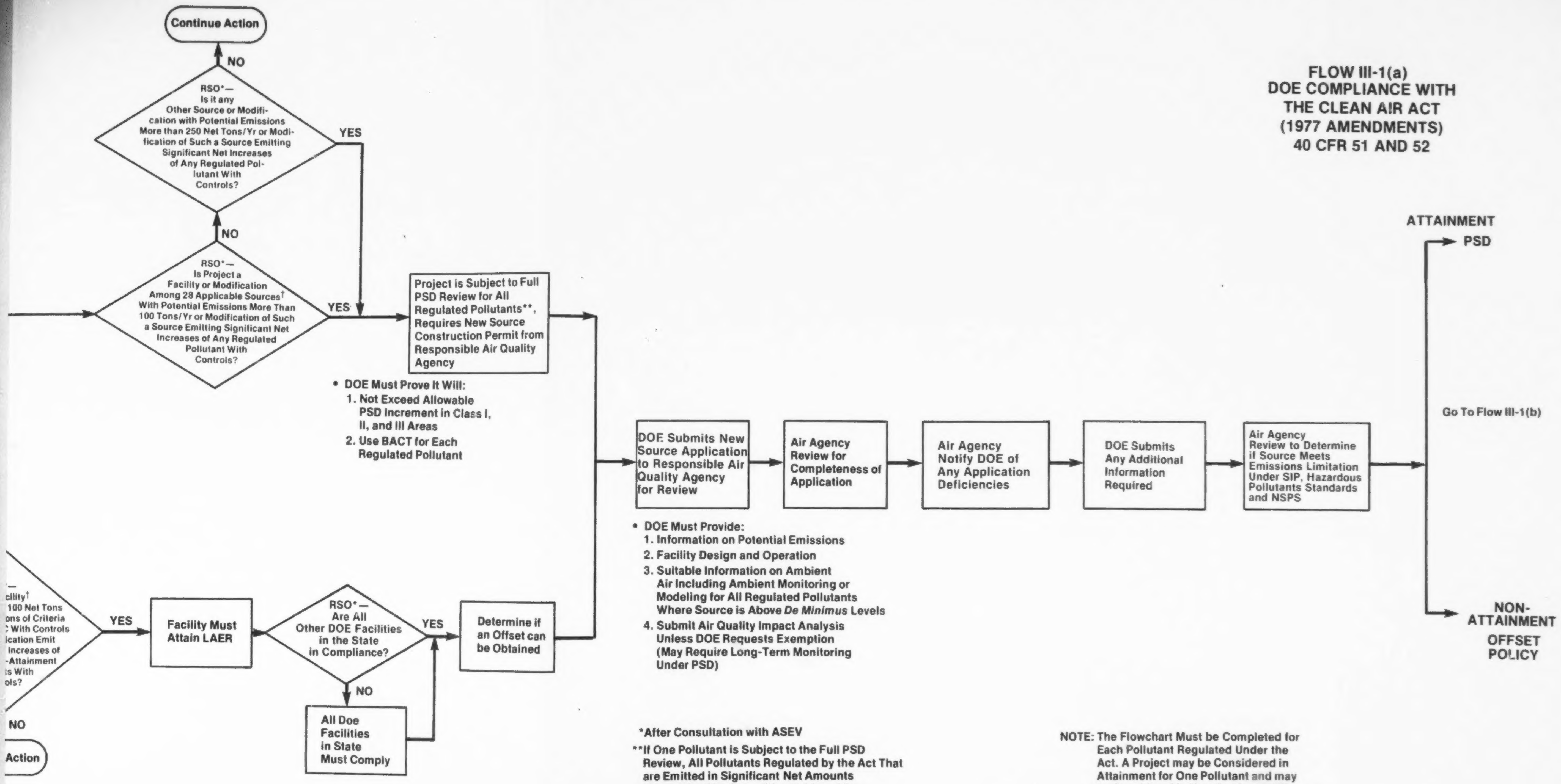
SO_2—Sulfur Dioxide
LAER—Lowest Achievable Emissions Reduction
BACT—Best Available Control Technology

VOC—Volatile Organic Compounds
Pollutants Regulated Under the Act are the Criteria Pollutants, Hazardous Pollutants and Pollutants Regulated Under NSPS

Potential Emissions—Calculated as the Maximum Design Capacity of the Source, Except as Constrained by Federally Enforceable Permit Conditions Such as Restrictions on Hours or Type of Source Operation

Significant Net Increases — Increase in Net Emissions Greater Than *De Minimus* Values

FLOW III-1(a)
DOE COMPLIANCE WITH THE CLEAN AIR ACT (1977 AMENDMENTS)
40 CFR 51 AND 52


Continue Action
NO
RSO*— Is it any Other Source or Modification with Potential Emissions More than 250 Net Tons/Yr or Modification of Such a Source Emitting Significant Net Increases of Any Regulated Pollutant With Controls?
YES
NO
RSO*— Is Project a Facility or Modification Among 28 Applicable Sources† With Potential Emissions More Than 100 Tons/Yr or Modification of Such a Source Emitting Significant Net Increases of Any Regulated Pollutant With Controls?
YES
Project is Subject to Full PSD Review for All Regulated Pollutants**, Requires New Source Construction Permit from Responsible Air Quality Agency
DOE Submits New Source Application to Responsible Air Quality Agency for Review
Air Agency Review for Completeness of Application
Air Agency Notify DOE of Any Application Deficiencies
DOE Submits Any Additional Information Required
Air Agency Review to Determine if Source Meets Emissions Limitation Under SIP, Hazardous Pollutants Standards and NSPS
ATTAINMENT
PSD
Go To Flow III-1(b)
NON-ATTAINMENT
OFFSET POLICY
— cility† 100 Net Tons ons of Criteria C With Controls ication Emit Increases of -Attainment ts With ols?
YES
Facility Must Attain LAER
RSO*— Are All Other DOE Facilities in the State in Compliance?
YES
NO
All Doe Facilities in State Must Comply
Determine if an Offset can be Obtained
NO
Action

- DOE Must Prove It Will:
  1. Not Exceed Allowable PSD Increment in Class I, II, and III Areas
  2. Use BACT for Each Regulated Pollutant

- DOE Must Provide:
  1. Information on Potential Emissions
  2. Facility Design and Operation
  3. Suitable Information on Ambient Air Including Ambient Monitoring or Modeling for All Regulated Pollutants Where Source is Above *De Minimus* Levels
  4. Submit Air Quality Impact Analysis Unless DOE Requests Exemption (May Require Long-Term Monitoring Under PSD)

al Emissions—Calculated as the
um Design Capacity of the Source,
as Constrained by Federally Enforce-
rmit Conditions Such as Restrictions on
or Type of Source Operation

Significant Net Increases — Increase in Net Emissions Greater Than *De Minimus* Values

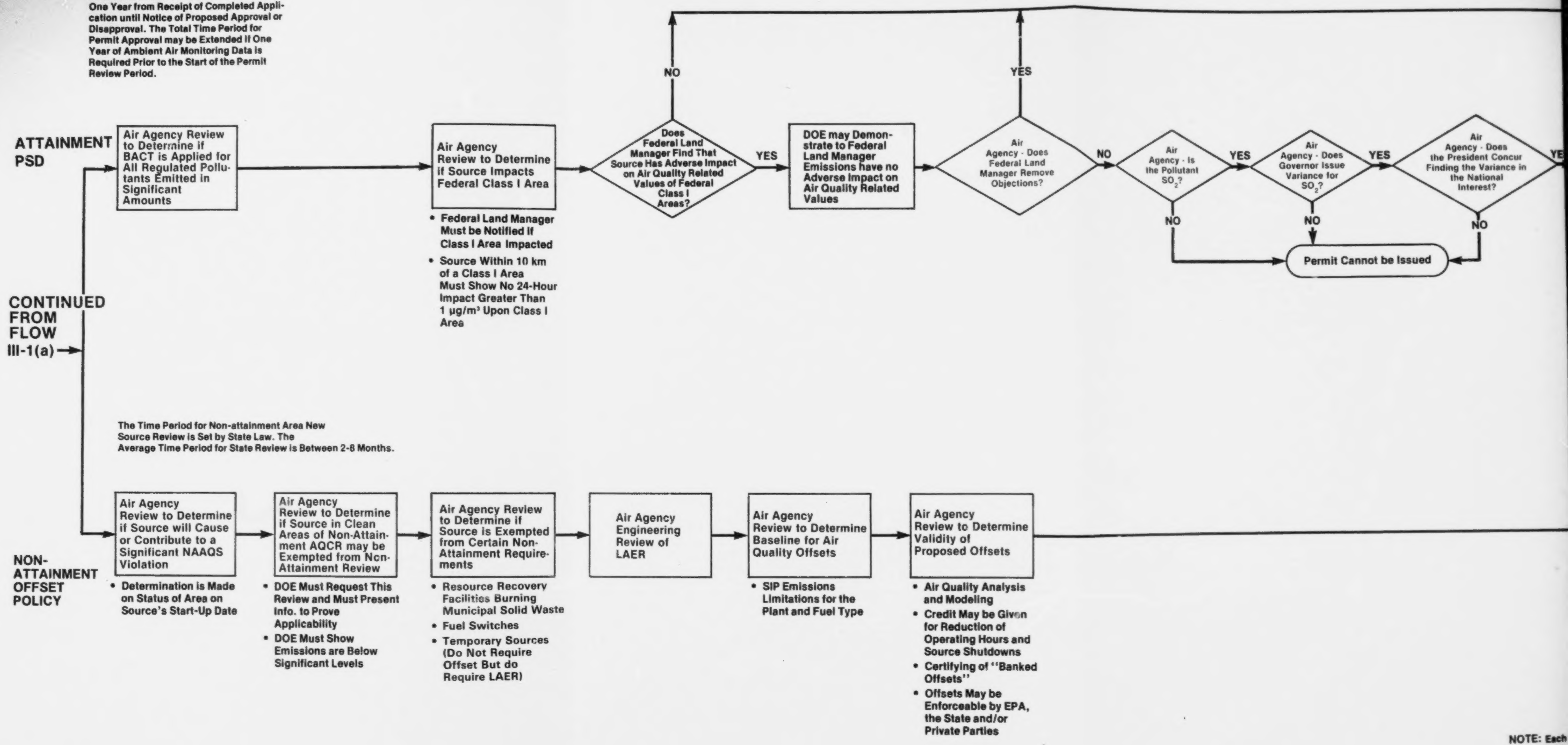
*After Consultation with ASEV

**If One Pollutant is Subject to the Full PSD Review, All Pollutants Regulated by the Act That are Emitted in Significant Net Amounts (Determined by Consulting Tables of *De Minimus* Values) Must Undergo PSD Review. Lesser Monitoring Requirements Apply for Applications Submitted During the 18 Month Period Beginning 8/7/80

†Fugitive Emissions are to be Included in Calculating Emissions for 26 of the 28 Applicable Sources.

NOTE: The Flowchart Must be Completed for Each Pollutant Regulated Under the Act. A Project may be Considered in Attainment for One Pollutant and may be Considered in Non-Attainment for Another Pollutant. A Project may be Subject to Both PSD Review and the Offset Policy, as well as Independent SIP Requirements.

PSD Review Time Period is a Maximum of One Year from Receipt of Completed Application until Notice of Proposed Approval or Disapproval. The Total Time Period for Permit Approval may be Extended If One Year of Ambient Air Monitoring Data is Required Prior to the Start of the Permit Review Period.



ATTAINMENT PSD
Air Agency Review to Determine if BACT is Applied for All Regulated Pollutants Emitted in Significant Amounts
Air Agency Review to Determine if Source Impacts Federal Class I Area
Does Federal Land Manager Find That Source Has Adverse Impact on Air Quality Related Values of Federal Class I Areas?
NO
YES
DOE may Demonstrate to Federal Land Manager Emissions have no Adverse Impact on Air Quality Related Values
Air Agency - Does Federal Land Manager Remove Objections?
YES
NO
Air Agency - Is the Pollutant SO2?
YES
NO
Air Agency - Does Governor Issue Variance for SO2?
YES
NO
Air Agency - Does the President Concur Finding the Variance in the National Interest?
YE
NO
Permit Cannot be Issued
CONTINUED FROM FLOW III-1(a)
NON-ATTAINMENT OFFSET POLICY
Air Agency Review to Determine if Source will Cause or Contribute to a Significant NAAQS Violation
Air Agency Review to Determine if Source in Clean Areas of Non-Attainment AQCR may be Exempted from Non-Attainment Review
Air Agency Review to Determine if Source is Exempted from Certain Non-Attainment Requirements
Air Agency Engineering Review of LAER
Air Agency Review to Determine Baseline for Air Quality Offsets
Air Agency Review to Determine Validity of Proposed Offsets

- Federal Land Manager Must be Notified if Class I Area Impacted
- Source Within 10 km of a Class I Area Must Show No 24-Hour Impact Greater Than 1 μg/m³ Upon Class I Area

The Time Period for Non-attainment Area New Source Review is Set by State Law. The Average Time Period for State Review is Between 2-8 Months.

- Determination is Made on Status of Area on Source's Start-Up Date

- DOE Must Request This Review and Must Present Info. to Prove Applicability
- DOE Must Show Emissions are Below Significant Levels

- Resource Recovery Facilities Burning Municipal Solid Waste
- Fuel Switches
- Temporary Sources (Do Not Require Offset But do Require LAER)

- SIP Emissions Limitations for the Plant and Fuel Type

- Air Quality Analysis and Modeling
- Credit May be Given for Reduction of Operating Hours and Source Shutdowns
- Certifying of "Banked Offsets"
- Offsets May be Enforceable by EPA, the State and/or Private Parties

NOTE: Each
Revie
Perm

Legend:

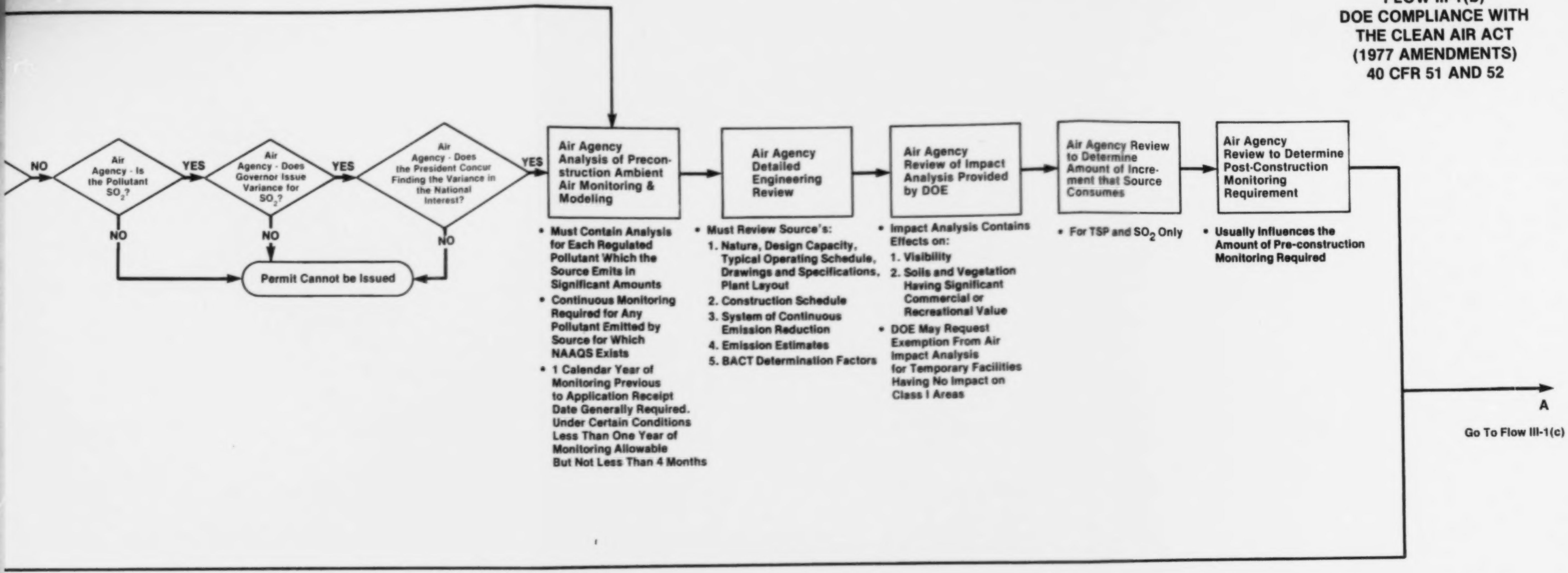
NSPS—New Source Performance Standards
SIP—State Implementation Plan
PSD—Prevention of Significant Deterioration
TSP—Total Suspended Particulates

NAAQS—National Ambient Air Quality Standard
SO_2—Sulfur Dioxide
LAER—Lowest Achievable Emissions Reduction
BACT—Best Available Control Technology

Potential Emissions—Emissions that Plant Emits Operating at Full Capacity 24 Hours/Day, 365 Days/Year
VOC—Volatile Organic Compounds

Pollutants Regulated Under the Act are the Criteria Pollutants, Hazardous Pollutants and Pollutants Regulated Under NSPS

FLOW III-1(b)
DOE COMPLIANCE WITH THE CLEAN AIR ACT (1977 AMENDMENTS) 40 CFR 51 AND 52


NO
Air Agency - Is the Pollutant SO_2?
YES
NO
Air Agency - Does Governor Issue Variance for SO_2?
YES
NO
Air Agency - Does the President Concur Finding the Variance in the National Interest?
YES
NO
Permit Cannot be Issued
Air Agency Analysis of Preconstruction Ambient Air Monitoring & Modeling
Air Agency Detailed Engineering Review
Air Agency Review of Impact Analysis Provided by DOE
Air Agency Review to Determine Amount of Increment that Source Consumes
Air Agency Review to Determine Post-Construction Monitoring Requirement
A
Go To Flow III-1(c)

- Must Contain Analysis for Each Regulated Pollutant Which the Source Emits in Significant Amounts
- Continuous Monitoring Required for Any Pollutant Emitted by Source for Which NAAQS Exists
- 1 Calendar Year of Monitoring Previous to Application Receipt Date Generally Required. Under Certain Conditions Less Than One Year of Monitoring Allowable But Not Less Than 4 Months

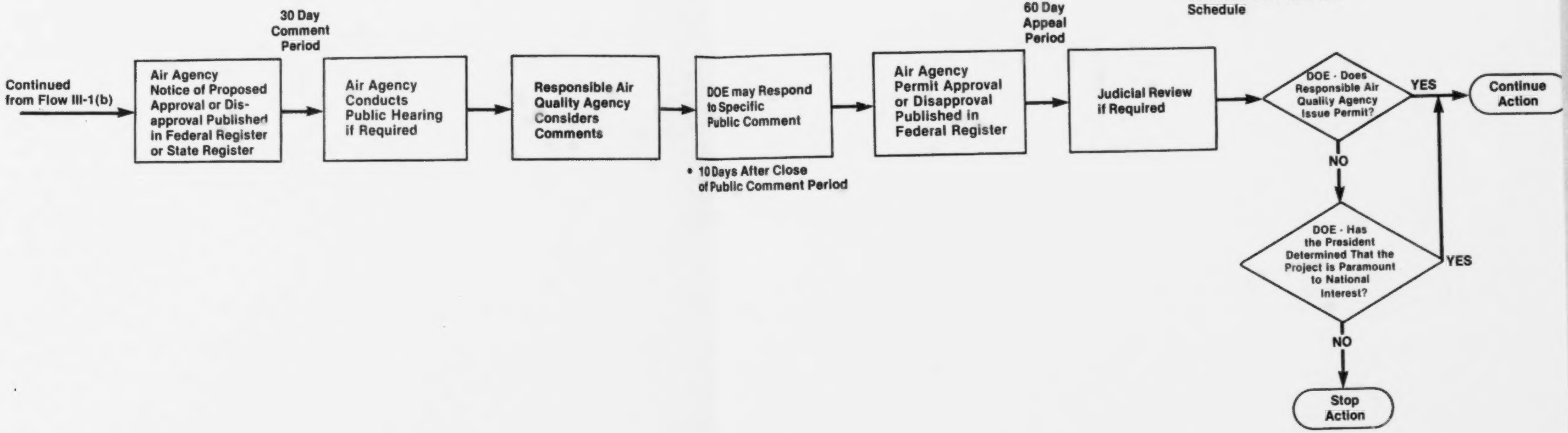
- Must Review Source's:
  1. Nature, Design Capacity, Typical Operating Schedule, Drawings and Specifications, Plant Layout
  2. Construction Schedule
  3. System of Continuous Emission Reduction
  4. Emission Estimates
  5. BACT Determination Factors

- Impact Analysis Contains Effects on:
  1. Visibility
  2. Soils and Vegetation Having Significant Commercial or Recreational Value
- DOE May Request Exemption From Air Impact Analysis for Temporary Facilities Having No Impact on Class I Areas

- For TSP and SO_2 Only

- Usually Influences the Amount of Pre-construction Monitoring Required

NOTE: Each State may Set Its Own Time Period for Review of Non-Attainment Area New Source Permits.


Continued from Flow III-1(b)
Air Agency Notice of Proposed Approval or Disapproval Published in Federal Register or State Register
30 Day Comment Period
Air Agency Conducts Public Hearing if Required
Responsible Air Quality Agency Considers Comments
DOE may Respond to Specific Public Comment
• 10 Days After Close of Public Comment Period
Air Agency Permit Approval or Disapproval Published in Federal Register
60 Day Appeal Period
Judicial Review if Required
DOE - Does Responsible Air Quality Agency Issue Permit?
YES
NO
Continue Action
DOE - Has the President Determined That the Project is Paramount to National Interest?
YES
NO
Stop Action

DOE:

1. Must Maintain Records on Nature & Amounts of Pollutants Emitted
2. Must Report Info to State Periodically
3. May be Required to Allow Periodic State Inspection
4. Must Meet All Permit Requirements
5. Normally Must Begin Construction Within 18 Months and Have a Continuous Construction Schedule

Legend:

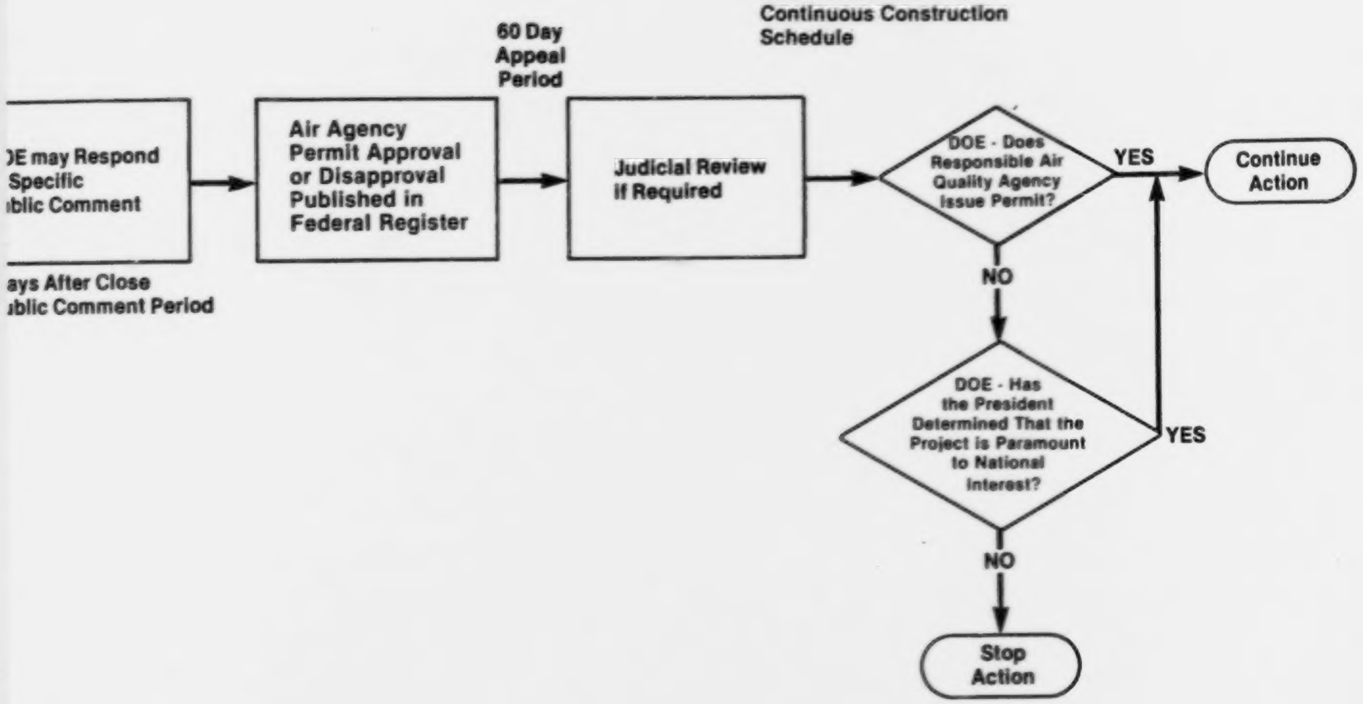
ASEV—Assistant Secretary for Environment
NSPS—New Source Performance Standards
SIP—State Implementation Plan
PSD—Prevention of Significant Deterioration

TSP—Total Suspended Particulates
NAAQS—National Ambient Air Quality Standard
SO_2—Sulfur Dioxide
LAER—Lowest Achievable Emissions Reduction

BACT—Best Available Control Technology
Potential Emissions—Emissions that Plant Emits Operating at Full Capacity 24 Hours/Day, 365 Days/Year

VOC—Volatile Organic Compounds
Pollutants Regulated Under the Act are the Criteria Pollutants, Hazardous Pollutants and Pollutants Controlled under NSPS

FLOW III-1(c)
DOE COMPLIANCE WITH THE CLEAN AIR ACT (1977 AMENDMENTS)
40 CFR 51 AND 52


60 Day
Appeal
Period
E may Respond
Specific
blic Comment
ays After Close
blic Comment Period
Air Agency Permit Approval or Disapproval Published in Federal Register
Judicial Review If Required
DOE - Does Responsible Air Quality Agency Issue Permit?
YES
Continue Action
NO
DOE - Has the President Determined That the Project is Paramount to National Interest?
YES
NO
Stop Action

DOE:
1. Must Maintain Records on Nature & Amounts of Pollutants Emitted
2. Must Report Info to State Periodically
3. May be Required to Allow Periodic State Inspection
4. Must Meet All Permit Requirements
5. Normally Must Begin Construction Within 18 Months and Have a Continuous Construction Schedule

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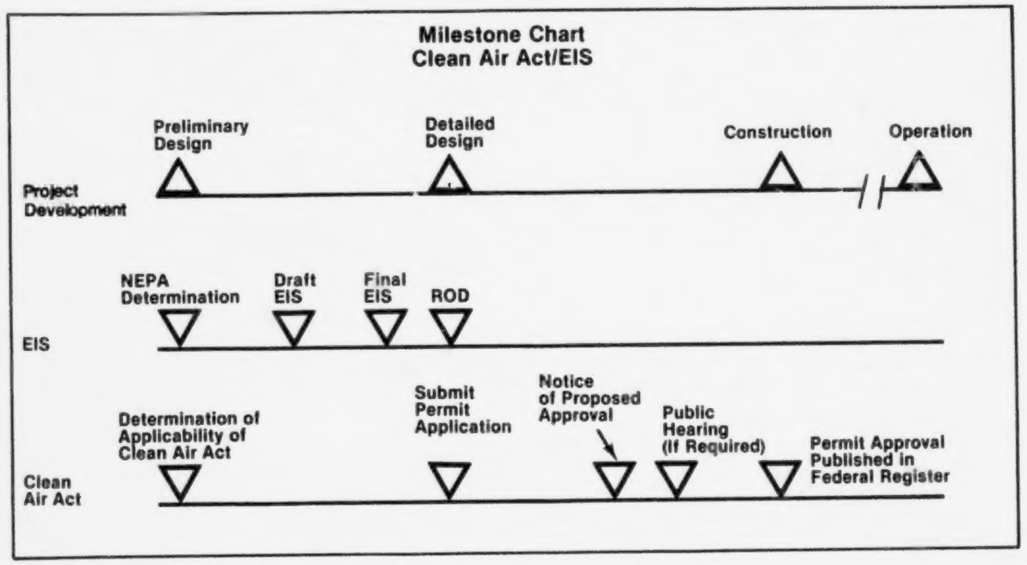
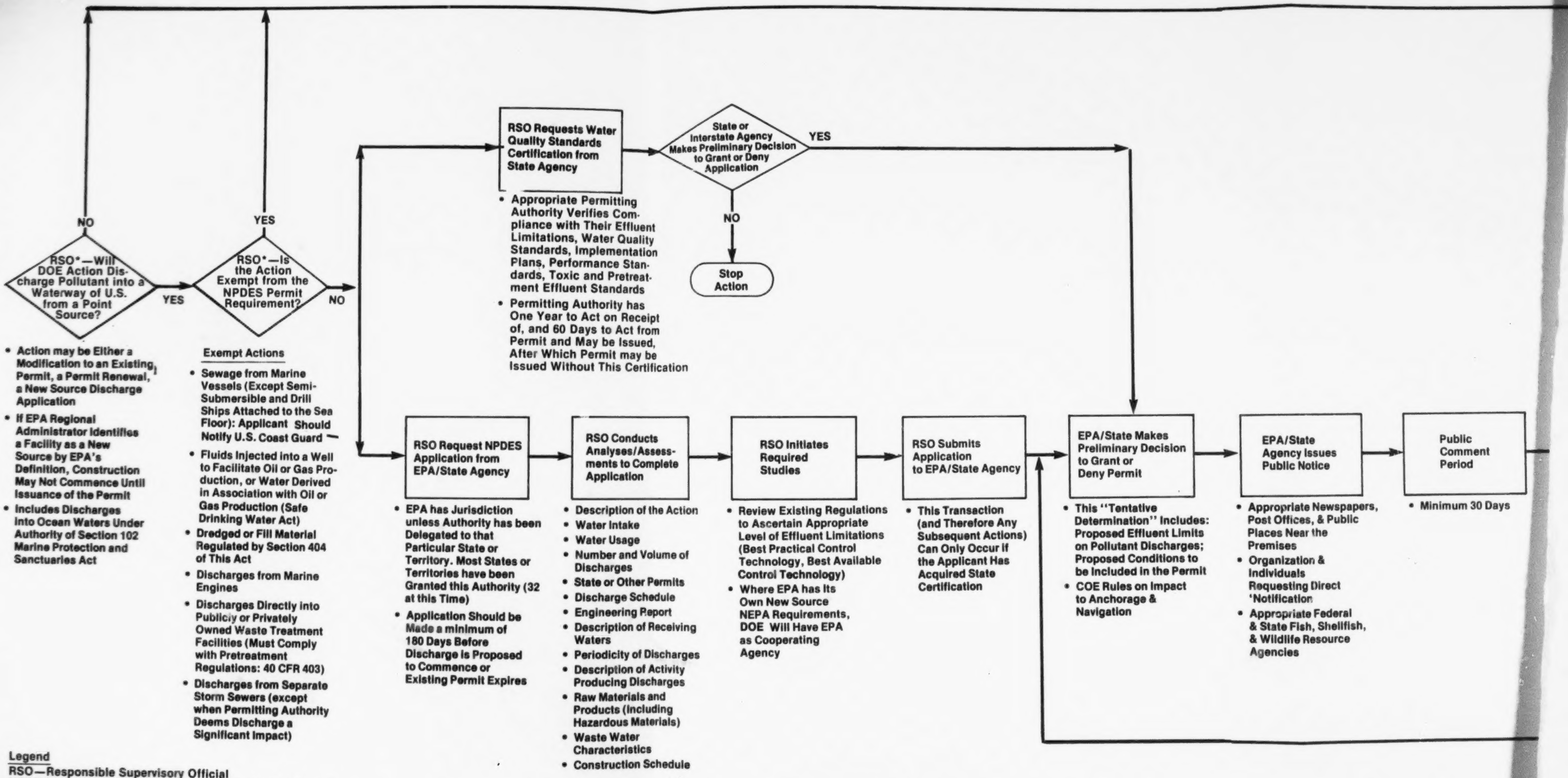
VOC—Volatile Organic Compounds
Pollutants Regulated Under the Act are the Criteria Pollutants, Hazardous Pollutants and Pollutants Controlled under NSPS


Milestone Chart
Clean Air Act/EIS
Project Development
Preliminary Design
Detailed Design
Construction
Operation
EIS
NEPA Determination
Draft EIS
Final EIS
ROD
Clean Air Act
Determination of Applicability of Clean Air Act
Submit Permit Application
Notice of Proposed Approval
Public Hearing (If Required)
Permit Approval Published in Federal Register

No Permanent Structures (e.g., Supports & Foundations) may be Installed Without a Final Permit Approval

FLOW III-2
CLEAN WATER (NPDES)


RSO*—Will DOE Action Discharge Pollutant into a Waterway of U.S. from a Point Source?
NO
YES
RSO*—Is the Action Exempt from the NPDES Permit Requirement?
YES
NO
RSO Requests Water Quality Standards Certification from State Agency
State or Interstate Agency Makes Preliminary Decision to Grant or Deny Application
YES
NO
Stop Action
RSO Request NPDES Application from EPA/State Agency
RSO Conducts Analyses/Assessments to Complete Application
RSO Initiates Required Studies
RSO Submits Application to EPA/State Agency
EPA/State Makes Preliminary Decision to Grant or Deny Permit
EPA/State Agency Issues Public Notice
Public Comment Period

- Action may be Either a Modification to an Existing Permit, a Permit Renewal, a New Source Discharge Application
- If EPA Regional Administrator Identifies a Facility as a New Source by EPA's Definition, Construction May Not Commence Until Issuance of the Permit
- Includes Discharges into Ocean Waters Under Authority of Section 102 Marine Protection and Sanctuaries Act

Exempt Actions

- Sewage from Marine Vessels (Except Semi-Submersible and Drill Ships Attached to the Sea Floor): Applicant Should Notify U.S. Coast Guard
- Fluids Injected into a Well to Facilitate Oil or Gas Production, or Water Derived in Association with Oil or Gas Production (Safe Drinking Water Act)
- Dredged or Fill Material Regulated by Section 404 of This Act
- Discharges from Marine Engines
- Discharges Directly into Publicly or Privately Owned Waste Treatment Facilities (Must Comply with Pretreatment Regulations: 40 CFR 403)
- Discharges from Separate Storm Sewers (except when Permitting Authority Deems Discharge a Significant Impact)

- Appropriate Permitting Authority Verifies Compliance with Their Effluent Limitations, Water Quality Standards, Implementation Plans, Performance Standards, Toxic and Pretreatment Effluent Standards
- Permitting Authority has One Year to Act on Receipt of, and 60 Days to Act from Permit and May be Issued, After Which Permit may be Issued Without This Certification

- EPA has Jurisdiction unless Authority has been Delegated to that Particular State or Territory. Most States or Territories have been Granted this Authority (32 at this Time)
- Application Should be Made a minimum of 180 Days Before Discharge is Proposed to Commence or Existing Permit Expires

- Description of the Action
- Water Intake
- Water Usage
- Number and Volume of Discharges
- State or Other Permits
- Discharge Schedule
- Engineering Report
- Description of Receiving Waters
- Periodicity of Discharges
- Description of Activity Producing Discharges
- Raw Materials and Products (Including Hazardous Materials)
- Waste Water Characteristics
- Construction Schedule

- Review Existing Regulations to Ascertain Appropriate Level of Effluent Limitations (Best Practical Control Technology, Best Available Control Technology)
- Where EPA has Its Own New Source NEPA Requirements, DOE Will Have EPA as Cooperating Agency

- This Transaction (and Therefore Any Subsequent Actions) Can Only Occur if the Applicant Has Acquired State Certification

- This "Tentative Determination" Includes: Proposed Effluent Limits on Pollutant Discharges; Proposed Conditions to be Included in the Permit
- COE Rules on Impact to Anchorage & Navigation

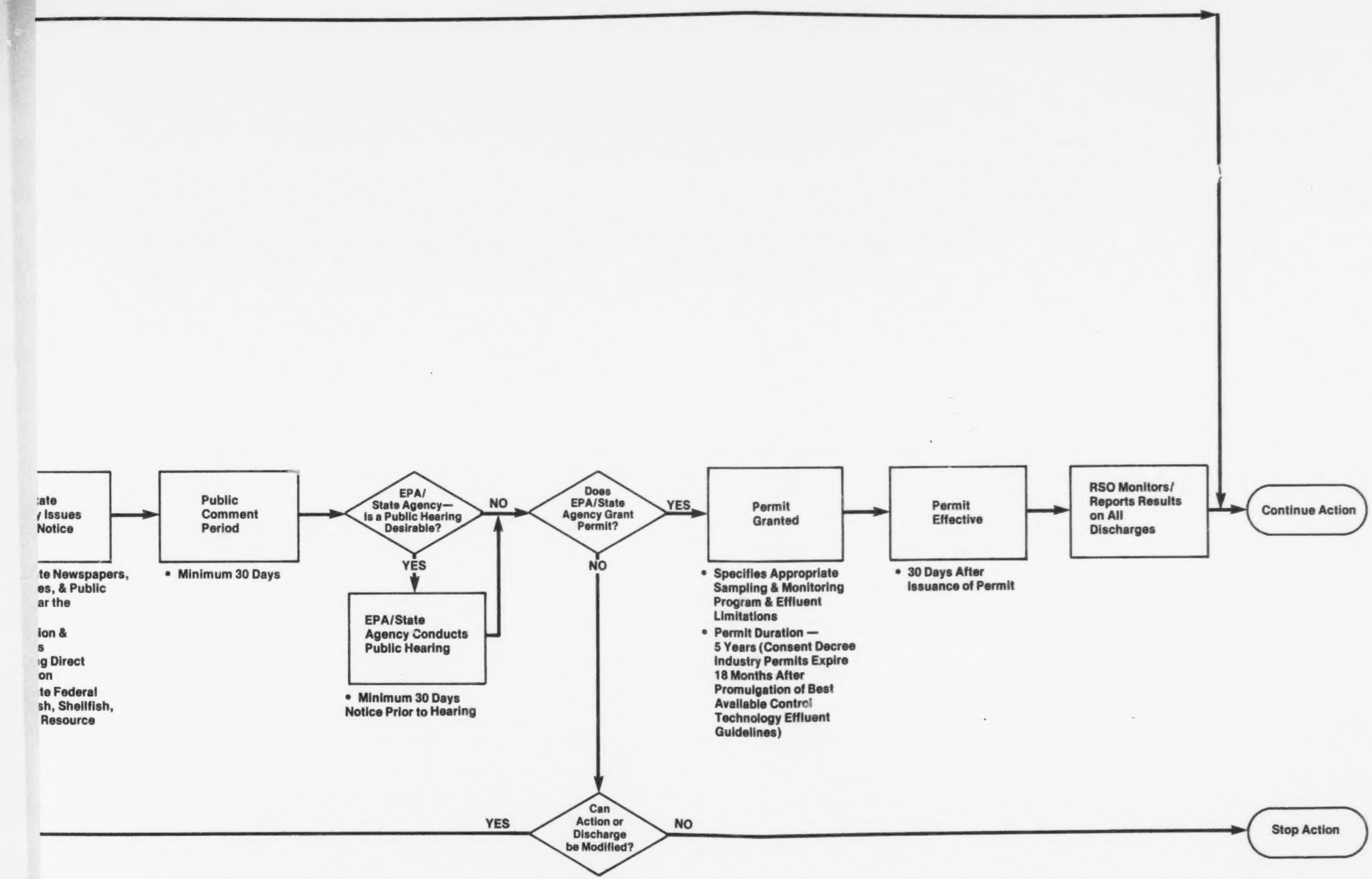
- Appropriate Newspapers, Post Offices, & Public Places Near the Premises
- Organization & Individuals Requesting Direct 'Notification
- Appropriate Federal & State Fish, Shellfish, & Wildlife Resource Agencies

- Minimum 30 Days

Legend

RSO—Responsible Supervisory Official
NPDES—National Pollutant Discharge Elimination System
EPA—Regional Administrator Environmental Protection Agency
ASEV—Assistant Secretary for Environment
DOE—Department of Energy

*After Consultation with ASEV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Notice
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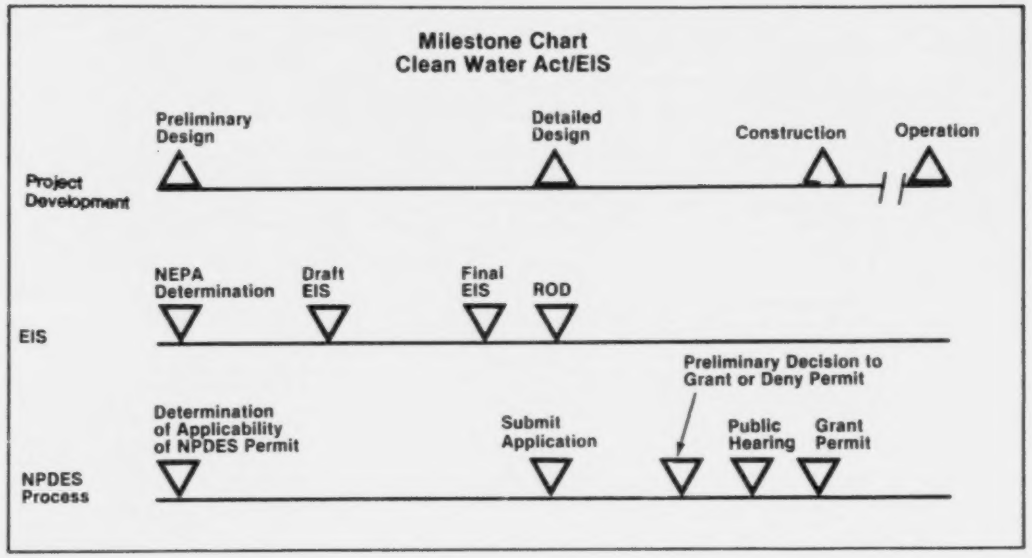
sh, Shellfish,
Resource
Public Comment Period
• Minimum 30 Days
EPA/ State Agency— Is a Public Hearing Desirable?
NO
YES
EPA/State Agency Conducts Public Hearing
• Minimum 30 Days Notice Prior to Hearing
Does EPA/State Agency Grant Permit?
YES
NO
Permit Granted
• Specifies Appropriate Sampling & Monitoring Program & Effluent Limitations
• Permit Duration — 5 Years (Consent Decree Industry Permits Expire 18 Months After Promulgation of Best Available Control Technology Effluent Guidelines)
Permit Effective
• 30 Days After Issuance of Permit
RSO Monitors/ Reports Results on All Discharges
Continue Action
YES
Can Action or Discharge be Modified?
NO
Stop Action

FLOW III-2
DOE COMPLIANCE WITH THE CLEAN WATER ACT (NATIONAL POLLUTANT DISCHARGE) ELIMINATION SYSTEM (NPDES))
45 CFR 122 SUBPARTS A & D, 125

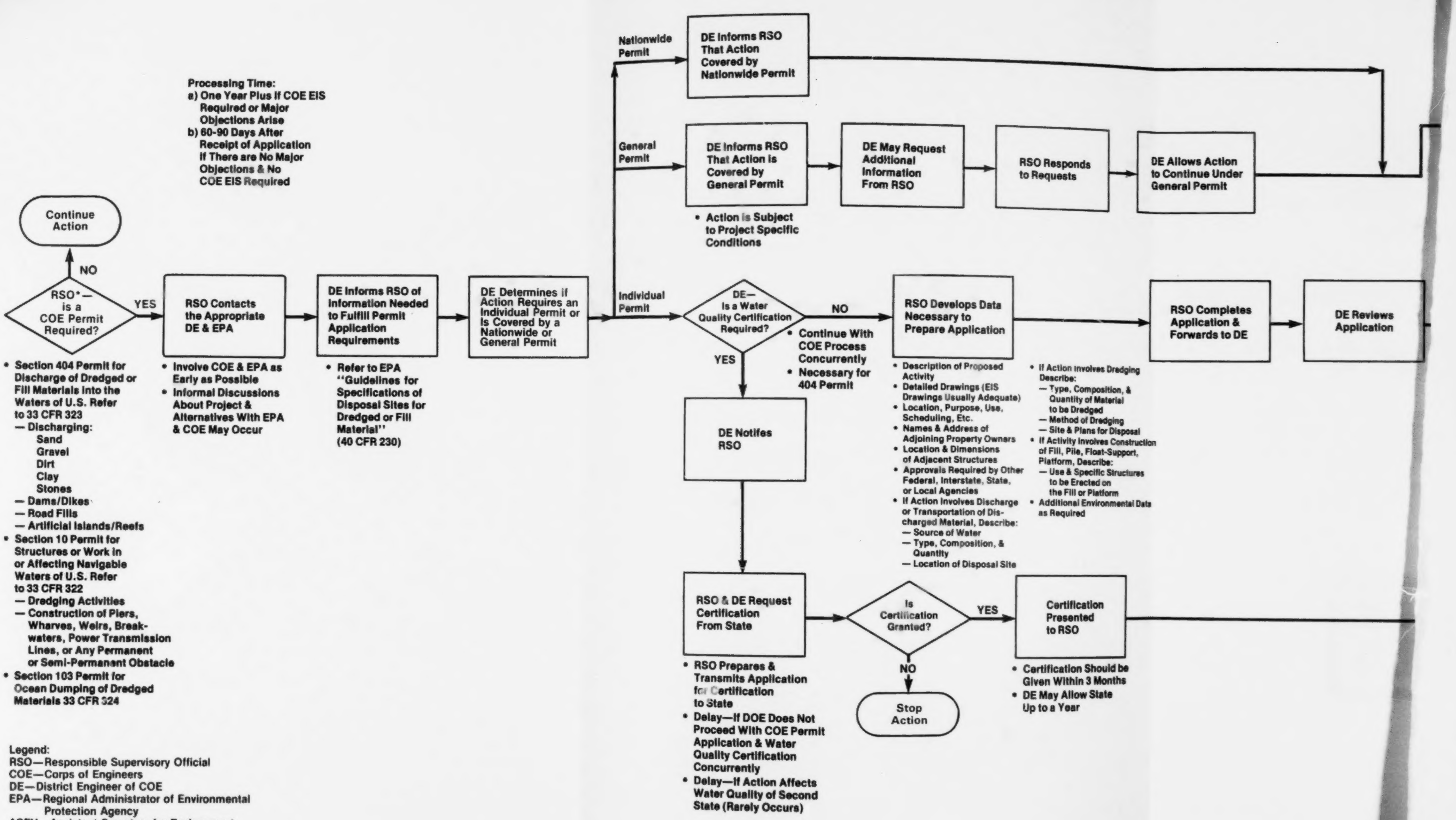


Milestone Chart
Clean Water Act/EIS

Preliminary Design
Detailed Design
Construction
Operation
Project Development
NEPA Determination
Draft EIS
Final EIS
ROD
EIS
Preliminary Decision to Grant or Deny Permit
Determination of Applicability of NPDES Permit
Submit Application
Public Hearing
Grant Permit
NPDES Process

Any construction related to the wastewater treatment facility may not begin until construction portion of permit is issued.

FLOW III-3
COE PERMIT


Continue Action
NO
RSO*— is a COE Permit Required?
YES
RSO Contacts the Appropriate DE & EPA
DE Informs RSO of Information Needed to Fulfill Permit Application Requirements
DE Determines if Action Requires an Individual Permit or Is Covered by a Nationwide or General Permit
Nationwide Permit
DE Informs RSO That Action Covered by Nationwide Permit
General Permit
DE Informs RSO That Action Is Covered by General Permit
DE May Request Additional Information From RSO
RSO Responds to Requests
DE Allows Action to Continue Under General Permit
Individual Permit
DE— Is a Water Quality Certification Required?
NO
YES
RSO Develops Data Necessary to Prepare Application
RSO Completes Application & Forwards to DE
DE Reviews Application
DE Notifies RSO
RSO & DE Request Certification From State
Is Certification Granted?
YES
NO
Stop Action
Certification Presented to RSO

Processing Time:
a) One Year Plus If COE EIS Required or Major Objections Arise
b) 60-90 Days After Receipt of Application If There are No Major Objections & No COE EIS Required

- Section 404 Permit for Discharge of Dredged or Fill Materials Into the Waters of U.S. Refer to 33 CFR 323
  - — Discharging:
    - Sand
    - Gravel
    - Dirt
    - Clay
    - Stones
  - — Dams/Dikes
  - — Road Fills
  - — Artificial Islands/Reefs
- Section 10 Permit for Structures or Work in or Affecting Navigable Waters of U.S. Refer to 33 CFR 322
  - — Dredging Activities
  - — Construction of Piers, Wharves, Weirs, Breakwaters, Power Transmission Lines, or Any Permanent or Semi-Permanent Obstacle
- Section 103 Permit for Ocean Dumping of Dredged Materials 33 CFR 324

- Involve COE & EPA as Early as Possible
- Informal Discussions About Project & Alternatives With EPA & COE May Occur

- Refer to EPA "Guidelines for Specifications of Disposal Sites for Dredged or Fill Material" (40 CFR 230)

- Action is Subject to Project Specific Conditions

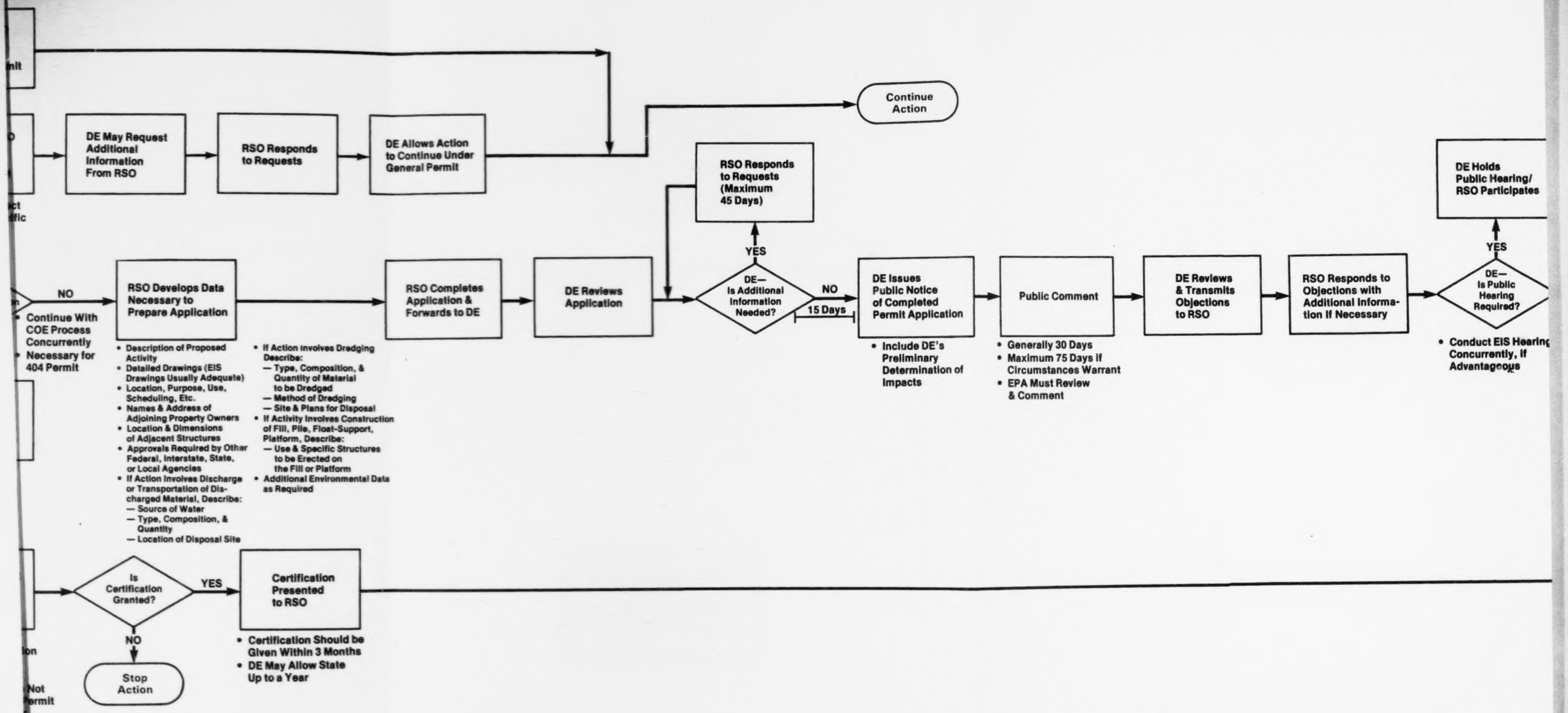
- Continue With COE Process Concurrently
- Necessary for 404 Permit

- Description of Proposed Activity
- Detailed Drawings (EIS Drawings Usually Adequate)
- Location, Purpose, Use, Scheduling, Etc.
- Names & Address of Adjoining Property Owners
- Location & Dimensions of Adjacent Structures
- Approvals Required by Other Federal, Interstate, State, or Local Agencies
- If Action Involves Discharge or Transportation of Discharged Material, Describe:
  - — Source of Water
  - — Type, Composition, & Quantity
  - — Location of Disposal Site
- If Action involves Dredging Describe:
  - — Type, Composition, & Quantity of Material to be Dredged
  - — Method of Dredging
  - — Site & Plans for Disposal
- If Activity Involves Construction of Fill, Pile, Float-Support, Platform, Describe:
  - — Use & Specific Structures to be Erected on the Fill or Platform
- Additional Environmental Data as Required

- RSO Prepares & Transmits Application for Certification to State
- Delay—If DOE Does Not Proceed With COE Permit Application & Water Quality Certification Concurrently
- Delay—If Action Affects Water Quality of Second State (Rarely Occurs)

- Certification Should be Given Within 3 Months
- DE May Allow State Up to a Year

Legend:
RSO—Responsible Supervisory Official
COE—Corps of Engineers
DE—District Engineer of COE
EPA—Regional Administrator of Environmental Protection Agency
ASEV—Assistant Secretary for Environment
CZM—Coastal Zone Management


DE May Request Additional Information From RSO
RSO Responds to Requests
DE Allows Action to Continue Under General Permit
Continue Action
NO
RSO Develops Data Necessary to Prepare Application
RSO Completes Application & Forwards to DE
DE Reviews Application
RSO Responds to Requests (Maximum 45 Days)
YES
DE— Is Additional Information Needed?
NO
15 Days
DE Issues Public Notice of Completed Permit Application
Public Comment
DE Reviews & Transmits Objections to RSO
RSO Responds to Objections with Additional Information If Necessary
DE— Is Public Hearing Required?
YES
DE Holds Public Hearing/ RSO Participates
Is Certification Granted?
YES
Certification Presented to RSO
NO
Stop Action

- Continue With COE Process Concurrently
- Necessary for 404 Permit

- Description of Proposed Activity
- Detailed Drawings (EIS Drawings Usually Adequate)
- Location, Purpose, Use, Scheduling, Etc.
- Names & Address of Adjoining Property Owners
- Location & Dimensions of Adjacent Structures
- Approvals Required by Other Federal, Interstate, State, or Local Agencies
- If Action Involves Discharge or Transportation of Discharged Material, Describe:
  - — Source of Water
  - — Type, Composition, & Quantity
  - — Location of Disposal Site
- If Action involves Dredging Describe:
  - — Type, Composition, & Quantity of Material to be Dredged
  - — Method of Dredging
  - — Site & Plans for Disposal
- If Activity Involves Construction of Fill, Pile, Float-Support, Platform, Describe:
  - — Use & Specific Structures to be Erected on the Fill or Platform
- Additional Environmental Data as Required

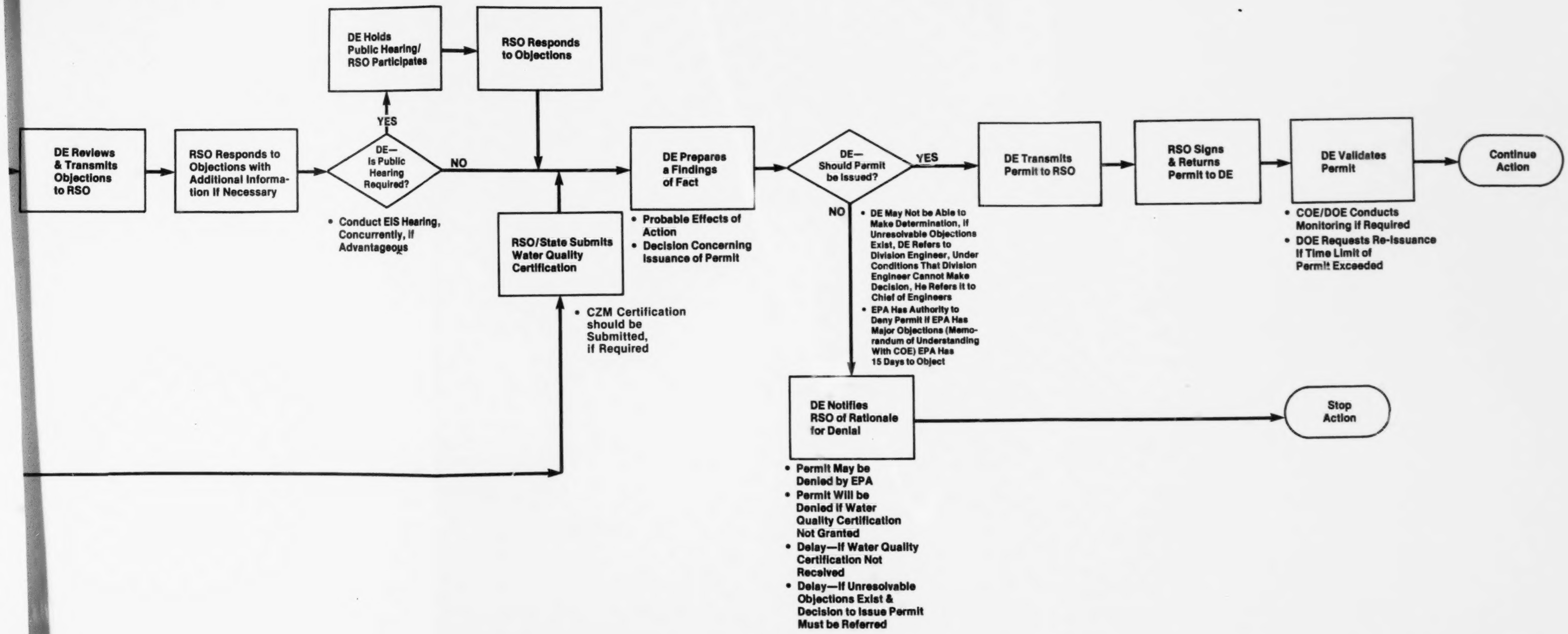
- Include DE's Preliminary Determination of Impacts

- Generally 30 Days
- Maximum 75 Days If Circumstances Warrant
- EPA Must Review & Comment

- Conduct EIS Hearing Concurrently, If Advantageous

- Certification Should be Given Within 3 Months
- DE May Allow State Up to a Year

*After Consultation with ASEV


DE Reviews & Transmits Objections to RSO
RSO Responds to Objections with Additional Information If Necessary
DE— Is Public Hearing Required?
YES
NO
DE Holds Public Hearing/ RSO Participates
RSO Responds to Objections
RSO/State Submits Water Quality Certification
DE Prepares a Findings of Fact
DE— Should Permit be Issued?
YES
NO
DE Transmits Permit to RSO
RSO Signs & Returns Permit to DE
DE Validates Permit
Continue Action
DE Notifies RSO of Rationale for Denial
Stop Action

- Conduct EIS Hearing, Concurrently, if Advantageous

- CZM Certification should be Submitted, if Required

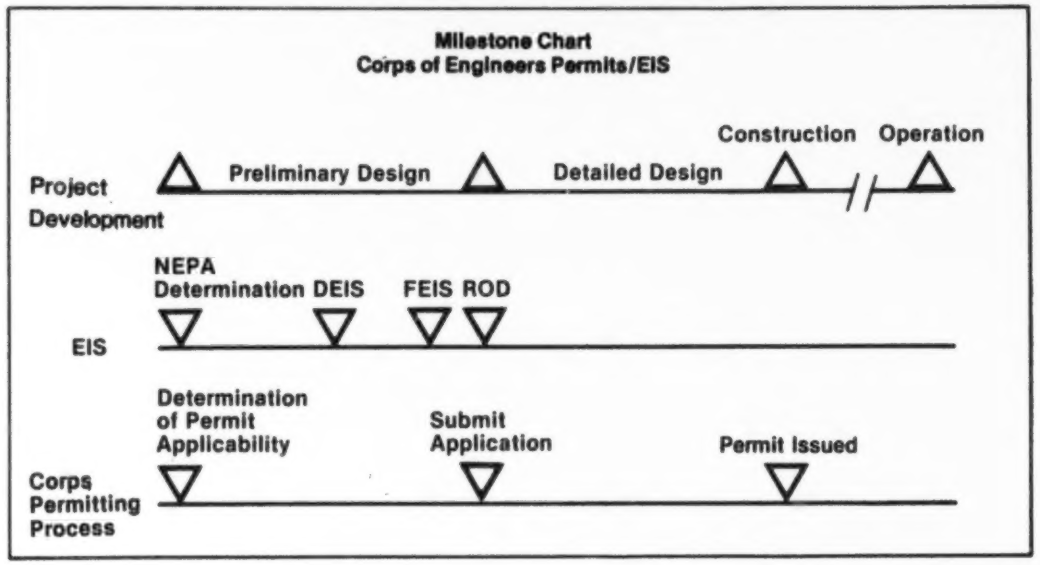
- Probable Effects of Action
- Decision Concerning Issuance of Permit

- DE May Not be Able to Make Determination, if Unresolvable Objections Exist, DE Refers to Division Engineer, Under Conditions That Division Engineer Cannot Make Decision, He Refers it to Chief of Engineers
- EPA Has Authority to Deny Permit if EPA Has Major Objections (Memorandum of Understanding With COE) EPA Has 15 Days to Object

- COE/DOE Conducts Monitoring if Required
- DOE Requests Re-Issuance if Time Limit of Permit Exceeded

- Permit May be Denied by EPA
- Permit Will be Denied if Water Quality Certification Not Granted
- Delay—If Water Quality Certification Not Received
- Delay—If Unresolvable Objections Exist & Decision to Issue Permit Must be Referred

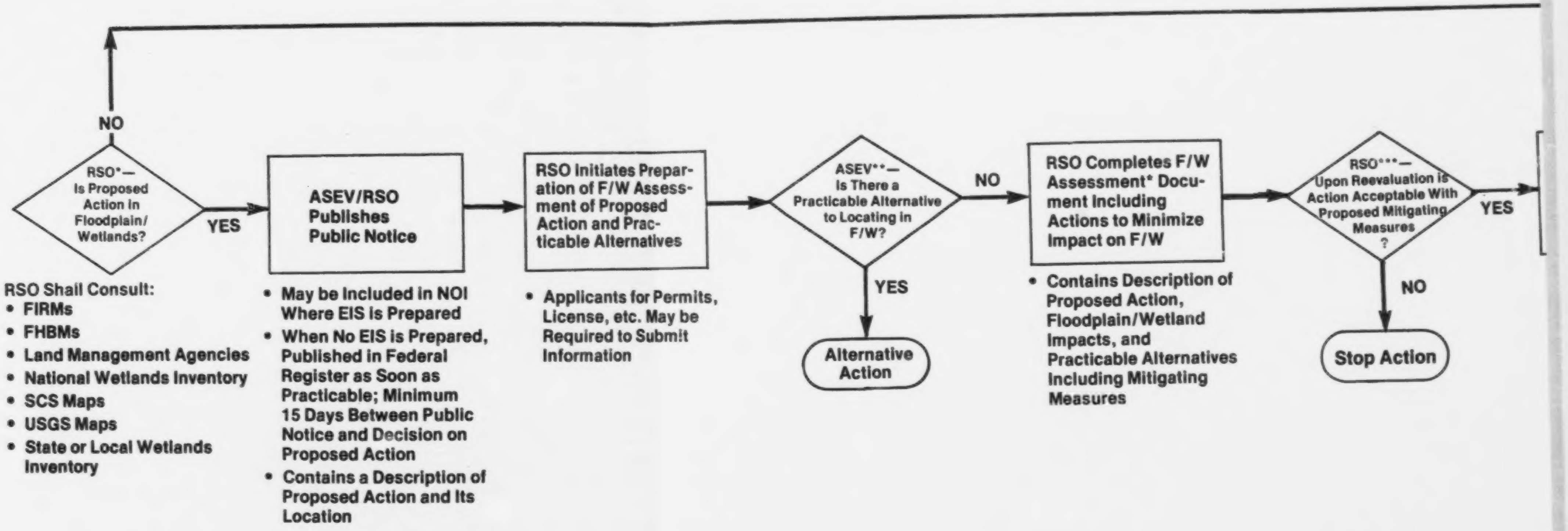
FLOW III-3
DOE COMPLIANCE WITH PROCESSING OF DEPARTMENT OF THE ARMY PERMITS
33 CFR 320, 322 THROUGH 329


Milestone Chart
Corps of Engineers Permits/EIS
Project Development
Preliminary Design
Detailed Design
Construction
Operation
EIS
NEPA Determination
DEIS
FEIS
ROD
Corps Permitting Process
Determination of Permit Applicability
Submit Application
Permit Issued

Construction Activities Requiring the Permit can Not Begin Until Permit Is Validated.

Permit Cannot be Processed Until 401 Water Quality Certification Is Received, When Such a Certification Is Needed.

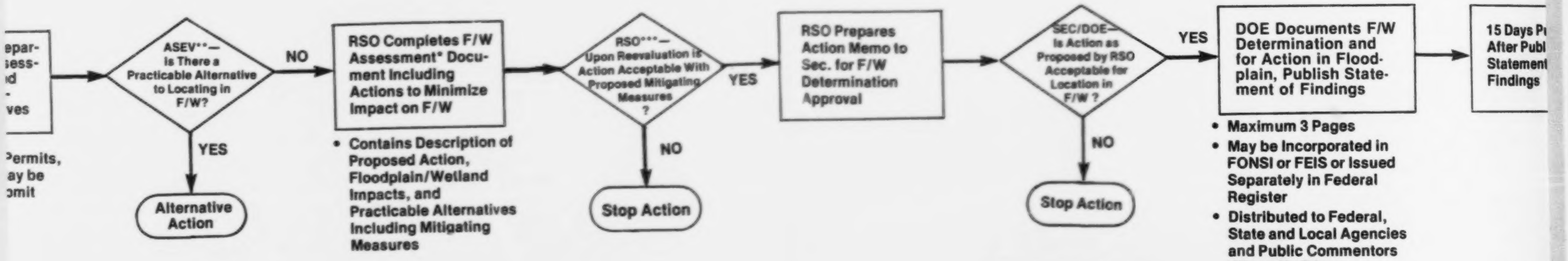
FLOW III-4
FLOODPLAINS/WETLANDS


NO
RSO*— Is Proposed Action in Floodplain/ Wetlands?
YES
ASEV/RSO Publishes Public Notice
RSO Initiates Preparation of F/W Assessment of Proposed Action and Practicable Alternatives
ASEV**— Is There a Practicable Alternative to Locating in F/W?
NO
YES
Alternative Action
RSO Completes F/W Assessment* Document Including Actions to Minimize Impact on F/W
RSO***— Upon Reevaluation is Action Acceptable With Proposed Mitigating Measures ?
YES
NO
Stop Action
RSO Shall Consult:
• FIRMs
• FHBMs
• Land Management Agencies
• National Wetlands Inventory
• SCS Maps
• USGS Maps
• State or Local Wetlands Inventory
• May be Included in NOI Where EIS is Prepared
• When No EIS is Prepared, Published in Federal Register as Soon as Practicable; Minimum 15 Days Between Public Notice and Decision on Proposed Action
• Contains a Description of Proposed Action and Its Location
• Applicants for Permits, License, etc. May be Required to Submit Information
• Contains Description of Proposed Action, Floodplain/Wetland Impacts, and Practicable Alternatives Including Mitigating Measures

*After Consultation with ASEV
**After Consultation with GC/RSO
***After Consultation with ASEV/GC

Legend:

ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
FIRMS—Federal Insurance Rate Maps
FHBMS—Federal Hazard Boundary Maps
F/W—Floodplain/Wetland
SCS—Soil Conservation Service
USGS—United States Geological Survey
ASEV/RSO—ASEV has Lead Responsibility; RSO has Assistance Responsibility.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ves
ASEV**— Is There a Practicable Alternative to Locating in F/W?
NO
YES
Alternative Action
RSO Completes F/W Assessment* Document Including Actions to Minimize Impact on F/W
RSO***— Upon Reevaluation is Action Acceptable With Proposed Mitigating Measures ?
YES
NO
Stop Action
RSO Prepares Action Memo to Sec. for F/W Determination Approval
SEC/DOE— Is Action as Proposed by RSO Acceptable for Location in F/W ?
YES
NO
Stop Action
DOE Documents F/W Determination and for Action in Floodplain, Publish Statement of Findings
15 Days P
After Publ
Statement
Findings

Permits,
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- Contains Description of Proposed Action, Floodplain/Wetland Impacts, and Practicable Alternatives Including Mitigating Measures

- This Decision Constitutes the F/W Determination Required by 10 CFR 1022

- Maximum 3 Pages
- May be Incorporated in FONSI or FEIS or Issued Separately in Federal Register
- Distributed to Federal, State and Local Agencies and Public Commentors Where No EA or EIS Required
- Contains Description; Explanation of Siting, Alternatives and Conformance to State and Local Floodplain Standards; and Minimization of Impact
- Minimum 15 Days Between Public Notice and F/W Determination

*After Consultation with ASEV
**After Consultation with GC/RSO
***After Consultation with ASEV/GC

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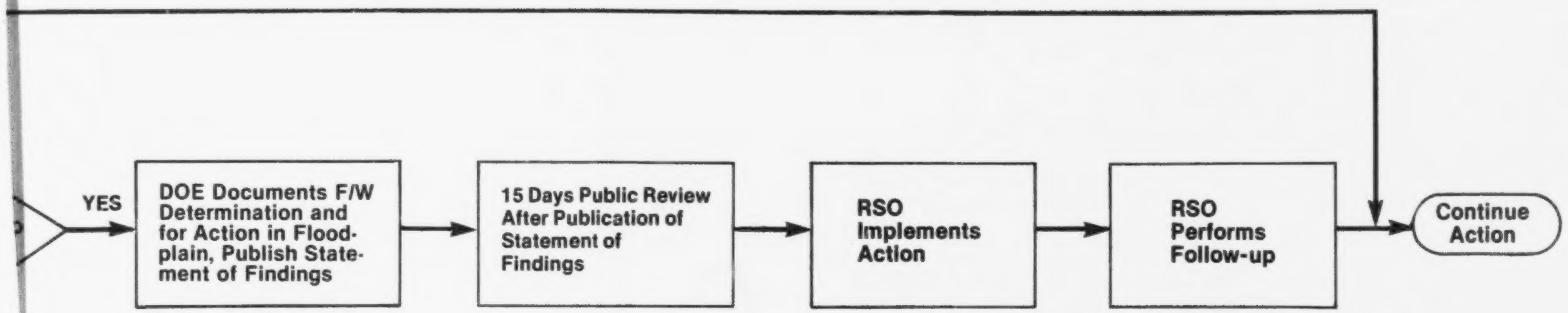
FLOW III-4
DOE COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS
10 CFR 1022


YES
DOE Documents F/W Determination and for Action in Floodplain, Publish Statement of Findings
15 Days Public Review After Publication of Statement of Findings
RSO Implements Action
RSO Performs Follow-up
Continue Action

- Maximum 3 Pages
- May be Incorporated in FONSI or FEIS or Issued Separately in Federal Register
- Distributed to Federal, State and Local Agencies and Public Commentors Where No EA or EIS Required
- Contains Description; Explanation of Siting, Alternatives and Conformance to State and Local Floodplain Standards; and Minimization of Impact
- Minimum 15 Days Between Public Notice and F/W Determination

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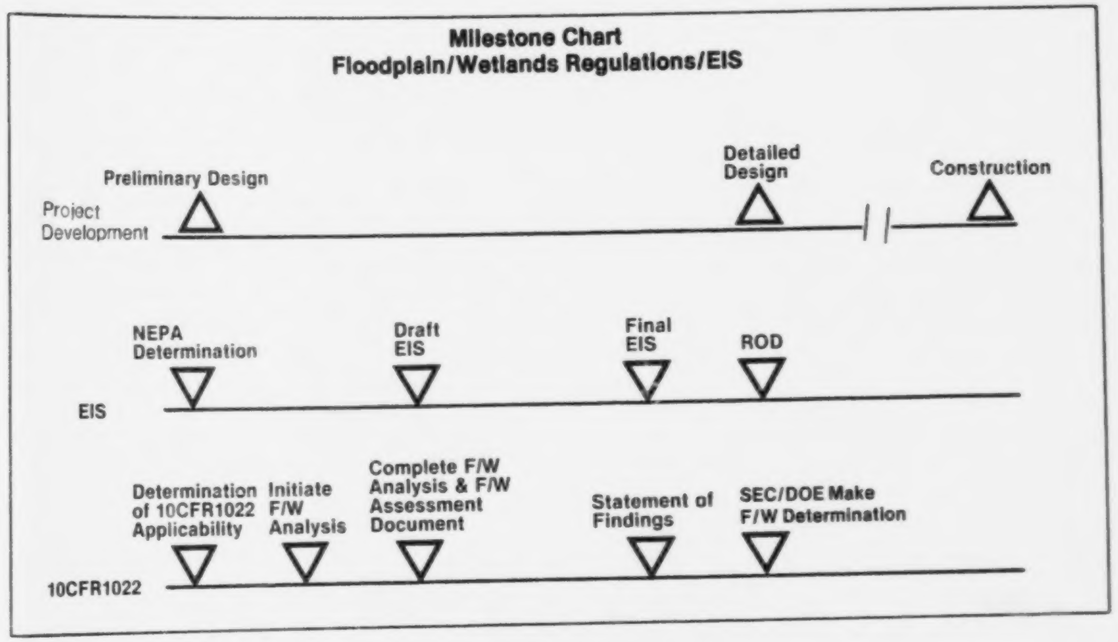
- Verify That Implementation is Proceeding as Described

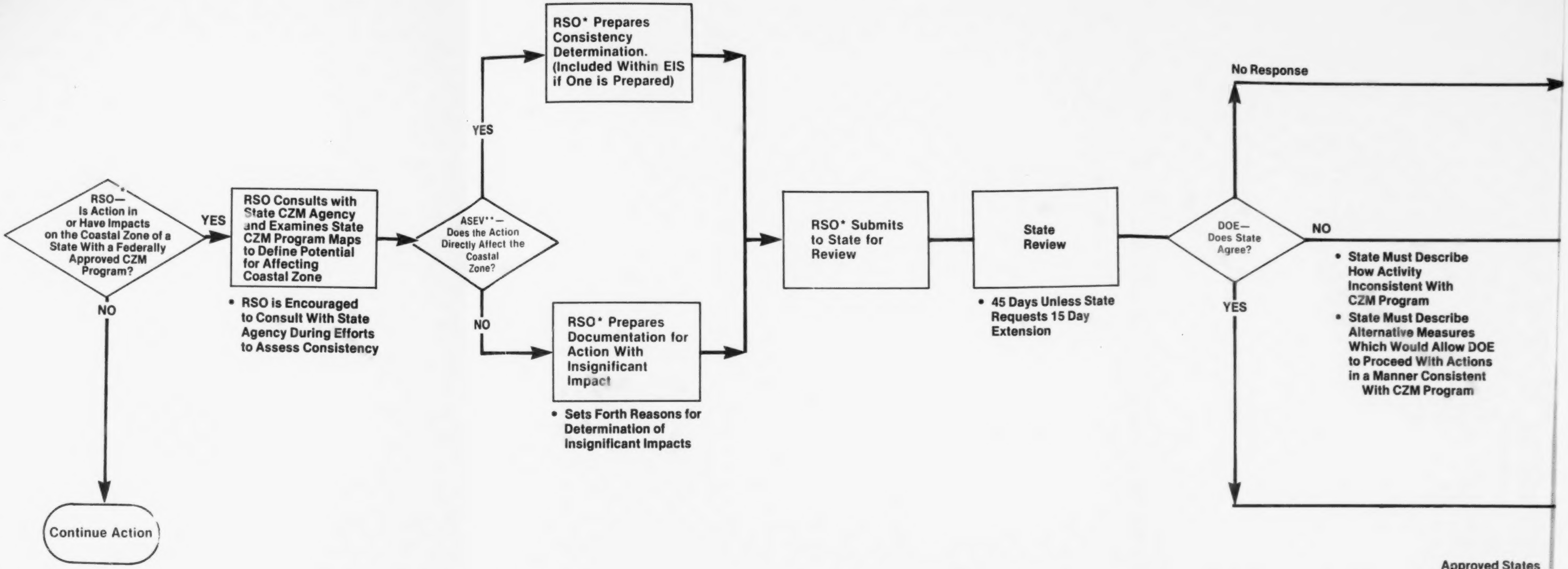


Milestone Chart
Floodplain/Wetlands Regulations/EIS

Prior to Implementing a Proposed Floodplain Action, DOE Shall Endeavor to Allow at Least 15 Days of Public Review After Publication of the Statement of Findings.

With respect to Wetlands Actions (Not Located in a Floodplain), DOE Shall Take No Action Prior to 15 Days After Publication of the Public Notice in the Federal Register.

FLOW III-5
COASTAL ZONE
MANAGEMENT


RSO— Is Action in or Have Impacts on the Coastal Zone of a State With a Federally Approved CZM Program?
YES
NO
Continue Action
RSO Consults with State CZM Agency and Examines State CZM Program Maps to Define Potential for Affecting Coastal Zone
• RSO is Encouraged to Consult With State Agency During Efforts to Assess Consistency
ASEV**— Does the Action Directly Affect the Coastal Zone?
YES
NO
RSO* Prepares Consistency Determination. (Included Within EIS if One is Prepared)
RSO* Prepares Documentation for Action With Insignificant Impact
• Sets Forth Reasons for Determination of Insignificant Impacts
RSO* Submits to State for Review
State Review
• 45 Days Unless State Requests 15 Day Extension
DOE— Does State Agree?
No Response
NO
YES
• State Must Describe How Activity Inconsistent With CZM Program
• State Must Describe Alternative Measures Which Would Allow DOE to Proceed With Actions in a Manner Consistent With CZM Program

Legend:

ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
RA—Resource Applications
CZM—Coastal Zone Management
ER—Environmental Report
SEC/DOC—Secretary of Commerce
SEC/DOE—Secretary of Energy
GC—General Counsel

*After Consultation with ASEV
**After Consultation with RSO and GC

NOTE: 1. This Flow Pertains to Federal Development Projects or Activities. These are Federal Activities that do not Include the Issuance of a Federal License or Permit to an Applicant or Person or the Granting of Federal Assistance to an Applicant Agency (15 CFR 930.31).

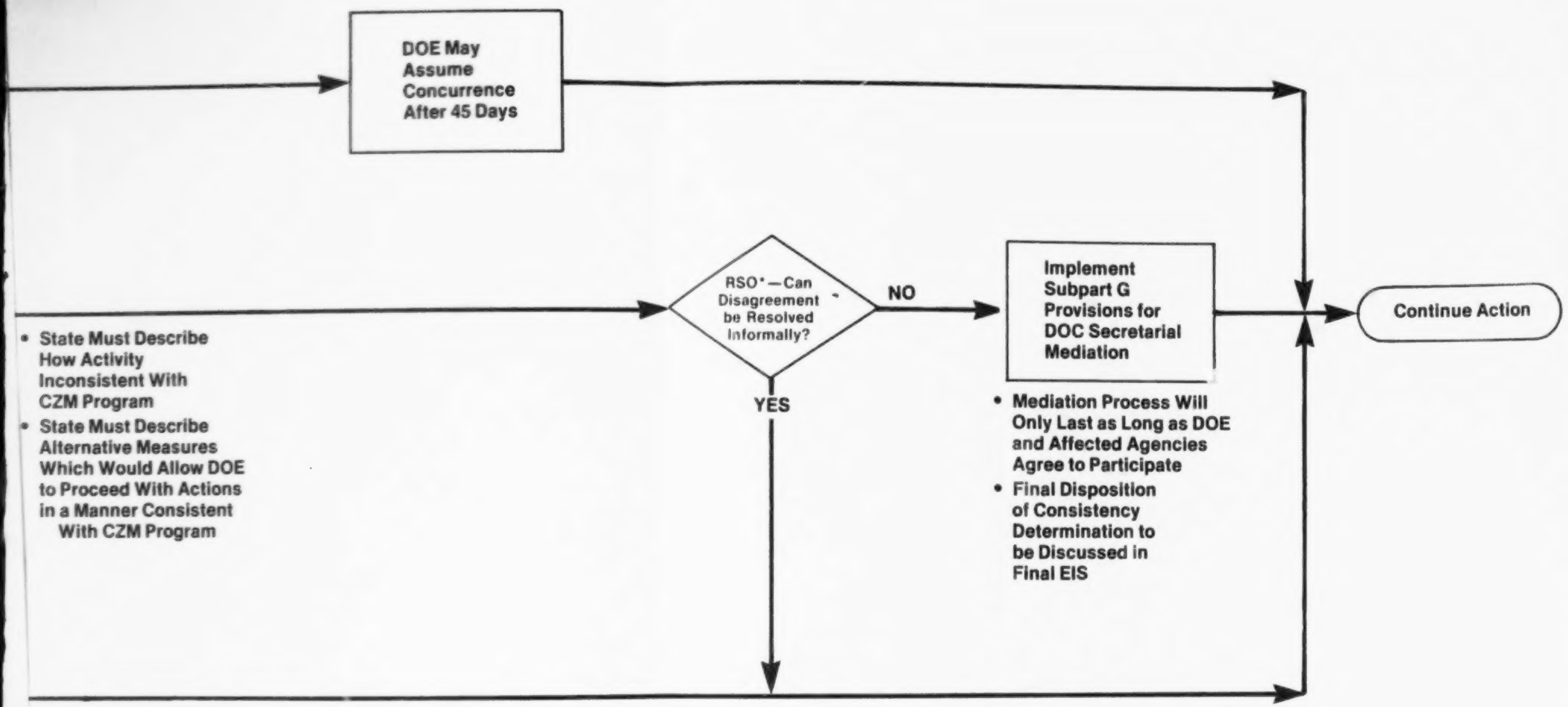
2. Federally Approved State Coastal Zone Management Programs:

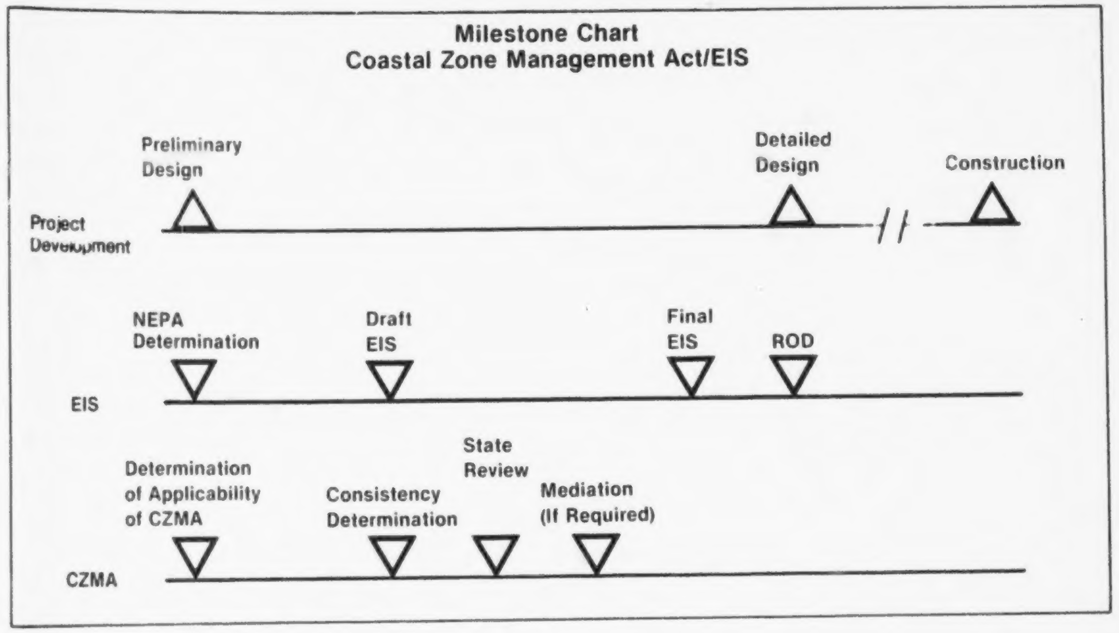
Approved States

Pacific:

North Atlantic:

FLOW III-5
DOE COMPLIANCE WITH THE COASTAL ZONE MANAGEMENT ACT
15 CFR 930


DOE May Assume Concurrence After 45 Days
RSO* — Can Disagreement be Resolved Informally?
NO
YES
Implement Subpart G Provisions for DOC Secretarial Mediation
Continue Action
• State Must Describe How Activity Inconsistent With CZM Program
• State Must Describe Alternative Measures Which Would Allow DOE to Proceed With Actions in a Manner Consistent With CZM Program
• Mediation Process Will Only Last as Long as DOE and Affected Agencies Agree to Participate
• Final Disposition of Consistency Determination to be Discussed in Final EIS


Milestone Chart
Coastal Zone Management Act/EIS
Project Development
Preliminary Design
Detailed Design
Construction
EIS
NEPA Determination
Draft EIS
Final EIS
ROD
CZMA
Determination of Applicability of CZMA
Consistency Determination
State Review
Mediation (If Required)

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Approved States

Pacific:
- Alaska
- American Samoa
- California
- Guam
- Hawaii
- Northern Marianas
- Oregon
- Washington

North Atlantic:
- Connecticut
- Maine
- Massachusetts
- New Jersey
- Rhode Island

Great Lakes:
- Michigan
- Pennsylvania
- Wisconsin

South Atlantic:
- Delaware
- Maryland
- North Carolina
- South Carolina

Gulf:
- Alabama
- Louisiana
- Mississippi
- Puerto Rico
- Virgin Islands

Approval Anticipated

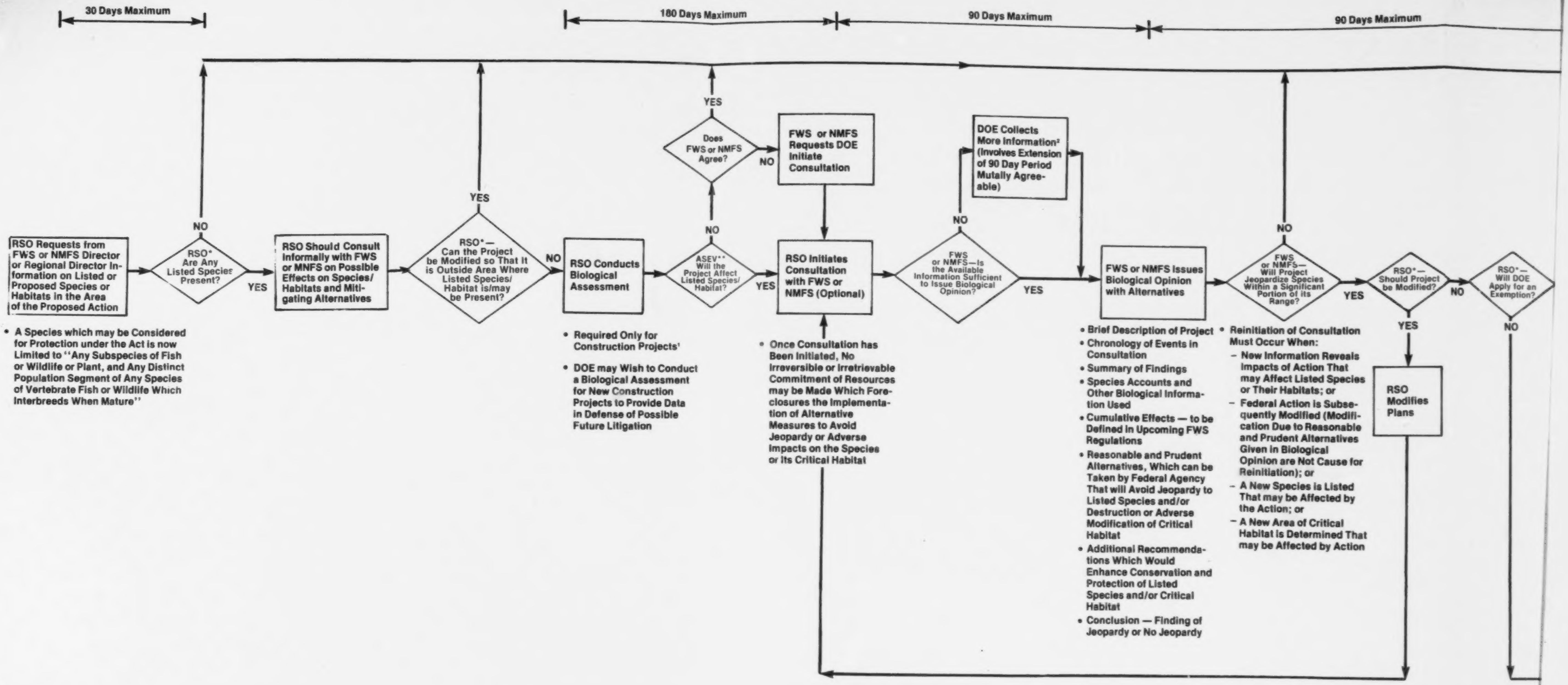
- Florida
- Indiana
- New Hampshire
- New York
- Ohio
- Texas

Not Participating

- Georgia
- Illinois
- Minnesota
- Virginia

Final DOE Action May Not be Taken Sooner Than 90 Days From the Submission of the Consistency Determination to the State Unless an Alternate Time Period Agreement is Made

ENDANGERED SPECIES


30 Days Maximum
180 Days Maximum
90 Days Maximum
90 Days Maximum
RSO Requests from FWS or NMFS Director or Regional Director Information on Listed or Proposed Species or Habitats in the Area of the Proposed Action
RSO* Are Any Listed Species Present?
NO
YES
RSO Should Consult Informally with FWS or MNFS on Possible Effects on Species/Habitats and Mitigating Alternatives
RSO*— Can the Project be Modified so That It is Outside Area Where Listed Species/Habitat is/may be Present?
YES
NO
RSO Conducts Biological Assessment
ASEV** Will the Project Affect Listed Species/Habitat?
NO
YES
Does FWS or NMFS Agree?
YES
NO
FWS or NMFS Requests DOE Initiate Consultation
RSO Initiates Consultation with FWS or NMFS (Optional)
FWS or NMFS—Is the Available Information Sufficient to Issue Biological Opinion?
NO
YES
DOE Collects More Information² (Involves Extension of 90 Day Period Mutally Agreeable)
FWS or NMFS Issues Biological Opinion with Alternatives
FWS or NMFS— Will Project Jeopardize Species Within a Significant Portion of its Range?
NO
YES
RSO*— Should Project be Modified?
YES
NO
RSO Modifies Plans
RSO*— Will DOE Apply for an Exemption?
NO

- A Species which may be Considered for Protection under the Act is now Limited to "Any Subspecies of Fish or Wildlife or Plant, and Any Distinct Population Segment of Any Species of Vertebrate Fish or Wildlife Which Interbreeds When Mature"

- Required Only for Construction Projects[1]
- DOE may Wish to Conduct a Biological Assessment for New Construction Projects to Provide Data in Defense of Possible Future Litigation

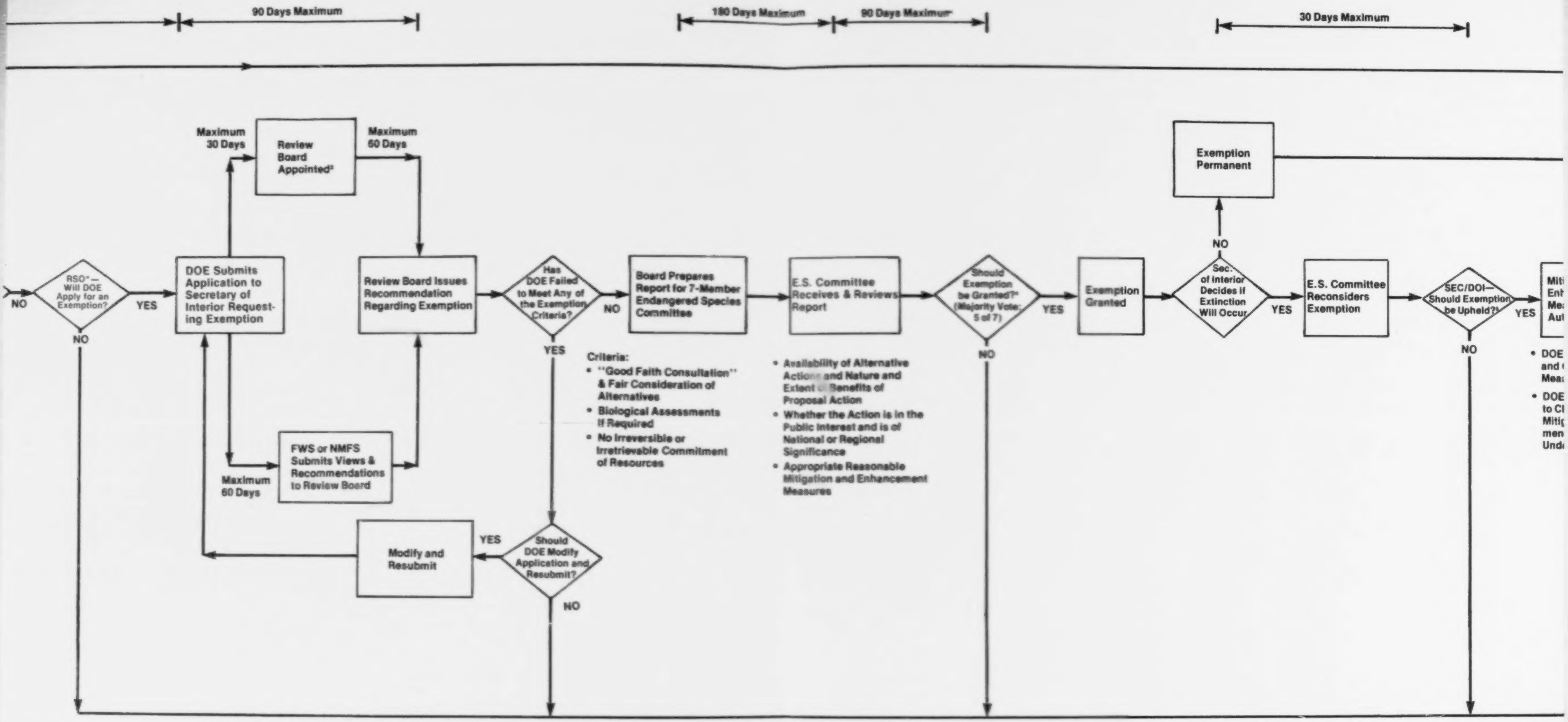
- Once Consultation has Been Initiated, No Irreversible or Irretrievable Commitment of Resources may be Made Which Foreclosures the Implementation of Alternative Measures to Avoid Jeopardy or Adverse Impacts on the Species or Its Critical Habitat

- Brief Description of Project
- Chronology of Events in Consultation
- Summary of Findings
- Species Accounts and Other Biological Information Used
- Cumulative Effects — to be Defined in Upcoming FWS Regulations
- Reasonable and Prudent Alternatives, Which can be Taken by Federal Agency That will Avoid Jeopardy to Listed Species and/or Destruction or Adverse Modification of Critical Habitat
- Additional Recommendations Which Would Enhance Conservation and Protection of Listed Species and/or Critical Habitat
- Conclusion — Finding of Jeopardy or No Jeopardy

- Reinitiation of Consultation Must Occur When:
  - New Information Reveals Impacts of Action That may Affect Listed Species or Their Habitats; or
  - Federal Action is Subsequently Modified (Modification Due to Reasonable and Prudent Alternatives Given in Biological Opinion are Not Cause for Reinitiation); or
  - A New Species is Listed That may be Affected by the Action; or
  - A New Area of Critical Habitat is Determined That may be Affected by Action

__Legend:__

FWS—Fish & Wildlife Service
NMFS—National Marine Fisheries Service
E.S.—Endangered Species
CEQ—Council on Environmental Quality
RSO—Responsible Supervisory Official
GC—General Counsel


90 Days Maximum
180 Days Maximum
90 Days Maximum
30 Days Maximum
NO
RSO¹— Will DOE Apply for an Exemption?
YES
NO
DOE Submits Application to Secretary of Interior Requesting Exemption
Maximum 30 Days
Review Board Appointed³
Maximum 60 Days
FWS or NMFS Submits Views & Recommendations to Review Board
Maximum 60 Days
Review Board Issues Recommendation Regarding Exemption
Has DOE Failed to Meet Any of the Exemption Criteria?
NO
YES
Criteria:
• "Good Faith Consultation" & Fair Consideration of Alternatives
• Biological Assessments If Required
• No Irreversible or Irretrievable Commitment of Resources
Should DOE Modify Application and Resubmit?
YES
NO
Modify and Resubmit
Board Prepares Report for 7-Member Endangered Species Committee
E.S. Committee Receives & Reviews Report
• Availability of Alternative Actions and Nature and Extent of Benefits of Proposal Action
• Whether the Action is in the Public Interest and is of National or Regional Significance
• Appropriate Reasonable Mitigation and Enhancement Measures
Should Exemption be Granted?⁴ (Majority Vote: 5 of 7)
YES
NO
Exemption Granted
Sec. of Interior Decides if Extinction Will Occur
NO
YES
Exemption Permanent
E.S. Committee Reconsiders Exemption
SEC/DOI— Should Exemption be Upheld?⁵
YES
NO
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[1] Defined in Upcoming Regulations as Any Action Requiring the Preparation of an EIS

[2] Or Negotiated Mutually-Acceptable Time Period

[3] The Review Board is Comprised of:
- One Secretary DOI Appointee
- One Presidential Appointee From Affected States
- One Administrative Law Judge Selected by the Civil Service Commission

[4] Three Exceptions to the Exemption Review Process are Provided for:
- The Secretary of State may Prohibit Exemption Consideration for Actions That Would Violate Any International Treaty Obligations of

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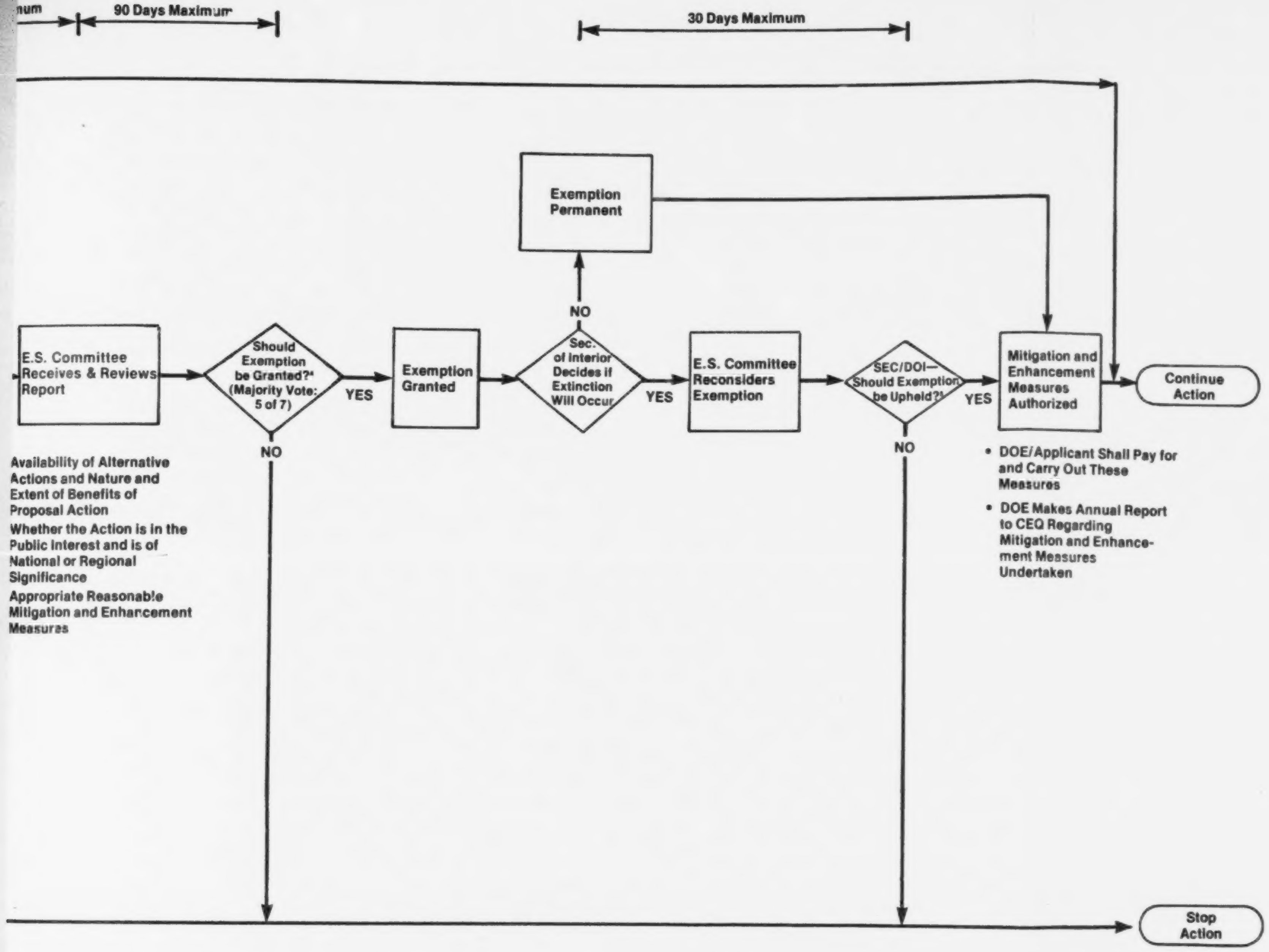
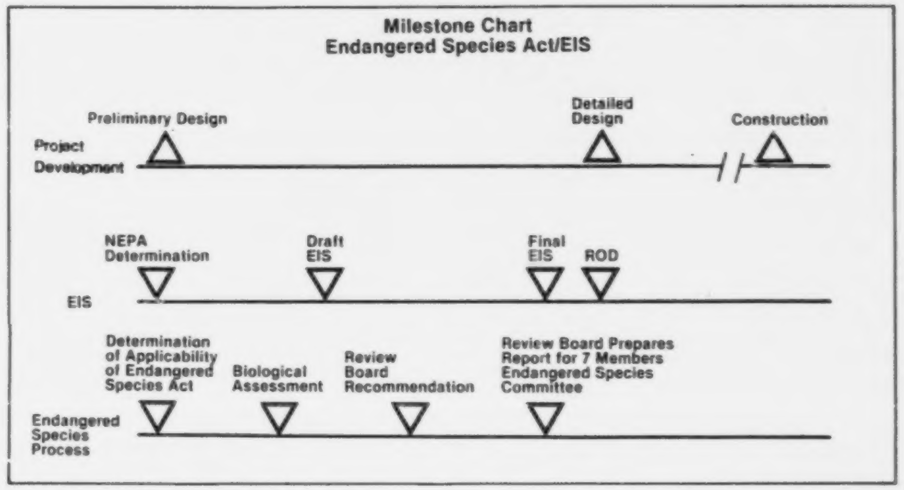
FLOW III-6
DOE COMPLIANCE WITH THE ENDANGERED SPECIES ACT
50 CFR 402


num
90 Days Maximum
30 Days Maximum
E.S. Committee Receives & Reviews Report
Should Exemption be Granted?[4] (Majority Vote: 5 of 7)
YES
NO
Exemption Granted
Sec. of Interior Decides if Extinction Will Occur
NO
Exemption Permanent
YES
E.S. Committee Reconsiders Exemption
SEC/DOI—Should Exemption be Upheld?[5]
YES
NO
Mitigation and Enhancement Measures Authorized
Continue Action
Stop Action
Availability of Alternative Actions and Nature and Extent of Benefits of Proposal Action
Whether the Action is in the Public Interest and is of National or Regional Significance
Appropriate Reasonable Mitigation and Enhancement Measures
• DOE/Applicant Shall Pay for and Carry Out These Measures
• DOE Makes Annual Report to CEQ Regarding Mitigation and Enhancement Measures Undertaken


Milestone Chart
Endangered Species Act/EIS
Project Development
Preliminary Design
Detailed Design
Construction
EIS
NEPA Determination
Draft EIS
Final EIS
ROD
Endangered Species Process
Determination of Applicability of Endangered Species Act
Biological Assessment
Review Board Recommendation
Review Board Prepares Report for 7 Members Endangered Species Committee

NOTE: The Biological Survey Should be Completed Prior to and the Results of the Biological Assessment Should be Included in the Draft EIS to the Extent Possible.

[1] Defined in Upcoming Regulations as Any Action Requiring the Preparation of an EIS

[2] Or Negotiated Mutually-Acceptable Time Period

[3] The Review Board is Comprised of:

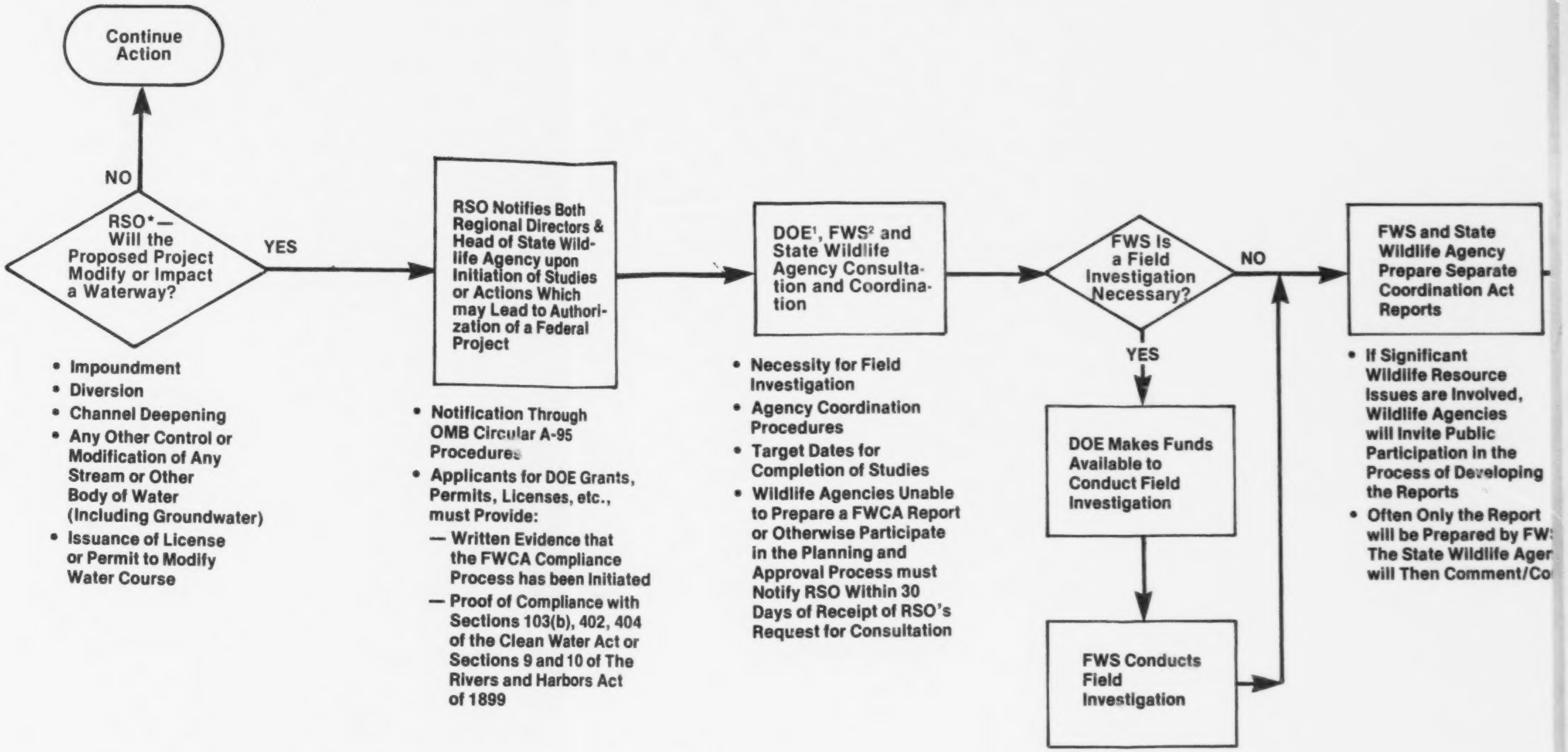
- One Secretary DOI Appointee
- One Presidential Appointee From Affected States
- One Administrative Law Judge Selected by the Civil Service Commission

[4] Three Exceptions to the Exemption Review Process are Provided for:

- The Secretary of State may Prohibit Exemption Consideration for Actions That Would Violate Any International Treaty Obligations of the United States (by Submitting Such Findings to the Committee in Writing Within 60 Days After the Receipt of an Exemption Application)
- The Secretary of Defense Can Exempt Actions From the Provisions of Section 7 If He Finds That the Actions are Necessary for National Defense
- The President May Grant Exemptions for Declared Major Disaster Areas

[5] The Committee's Final Decision is Subject to Judicial Review. Any Person Wishing to Appeal May Bring Such Action to the United States Court of Appeals

FISH AND WILDLIFE
COORDINATION


Continue Action
NO
RSO*— Will the Proposed Project Modify or Impact a Waterway?
YES
RSO Notifies Both Regional Directors & Head of State Wildlife Agency upon Initiation of Studies or Actions Which may Lead to Authorization of a Federal Project
DOE¹, FWS² and State Wildlife Agency Consultation and Coordination
FWS Is a Field Investigation Necessary?
NO
YES
DOE Makes Funds Available to Conduct Field Investigation
FWS Conducts Field Investigation
FWS and State Wildlife Agency Prepare Separate Coordination Act Reports

- Impoundment
- Diversion
- Channel Deepening
- Any Other Control or Modification of Any Stream or Other Body of Water (Including Groundwater)
- Issuance of License or Permit to Modify Water Course

- Notification Through OMB Circular A-95 Procedures
- Applicants for DOE Grants, Permits, Licenses, etc., must Provide:
  - — Written Evidence that the FWCA Compliance Process has been Initiated
  - — Proof of Compliance with Sections 103(b), 402, 404 of the Clean Water Act or Sections 9 and 10 of The Rivers and Harbors Act of 1899

- Necessity for Field Investigation
- Agency Coordination Procedures
- Target Dates for Completion of Studies
- Wildlife Agencies Unable to Prepare a FWCA Report or Otherwise Participate in the Planning and Approval Process must Notify RSO Within 30 Days of Receipt of RSO's Request for Consultation

- If Significant Wildlife Resource Issues are Involved, Wildlife Agencies will Invite Public Participation in the Process of Developing the Reports
- Often Only the Report will be Prepared by FW The State Wildlife Ager will Then Comment/Co

Legend:

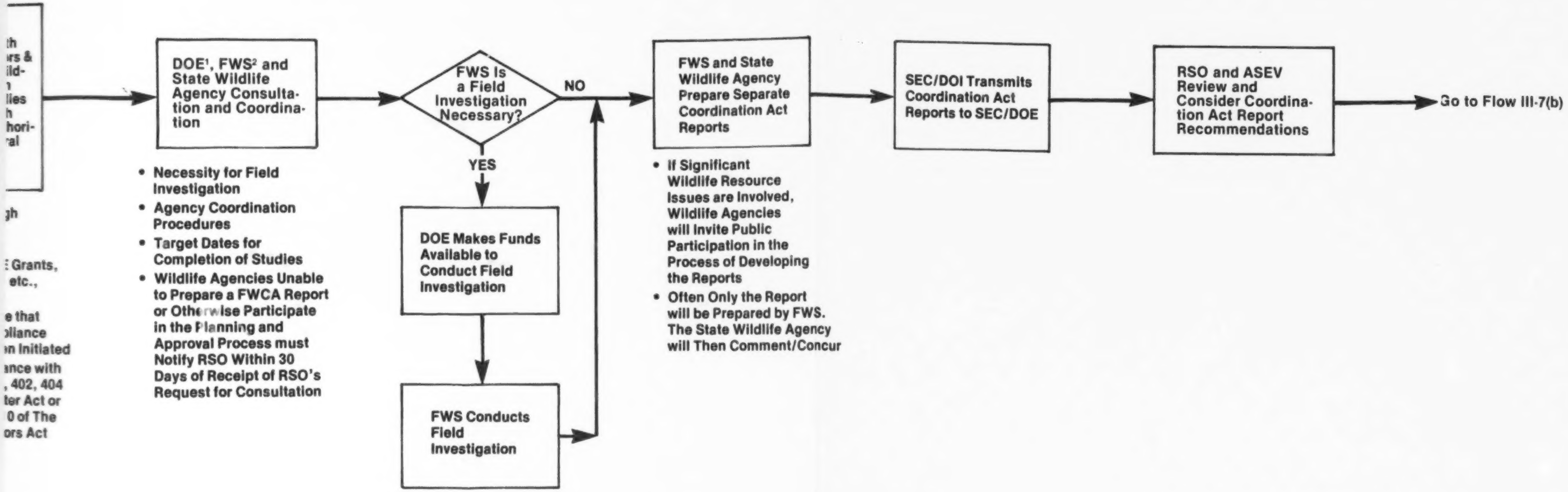
ASEV—Assistant Secretary for Environment
FWS—Fish and Wildlife Service
SEC/DOI—Secretary Department of Interior
RSO—Responsible Supervisory Official
DOE—Department of Energy
GC—General Counsel

[1] If a Corps of Engineers or Environmental Protection Agency Permit is Required, They will Become the Lead Agency Responsible for Compliance with FWCA.

[2] Fish & Wildlife Service = National Marine Fisheries Service

*After Consultation with ASEV and GC

FLOW III-7(a)
DOE COMPLIANCE WITH THE FISH AND WILDLIFE COORDINATION ACT
50 CFR 410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al
DOE¹, FWS² and State Wildlife Agency Consultation and Coordination
FWS Is a Field Investigation Necessary?
NO
YES
DOE Makes Funds Available to Conduct Field Investigation
FWS Conducts Field Investigation
FWS and State Wildlife Agency Prepare Separate Coordination Act Reports
SEC/DOI Transmits Coordination Act Reports to SEC/DOE
RSO and ASEV Review and Consider Coordination Act Report Recommendations
Go to Flow III-7(b)

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- Necessity for Field Investigation
- Agency Coordination Procedures
- Target Dates for Completion of Studies
- Wildlife Agencies Unable to Prepare a FWCA Report or Otherwise Participate in the Planning and Approval Process must Notify RSO Within 30 Days of Receipt of RSO's Request for Consultation

- If Significant Wildlife Resource Issues are Involved, Wildlife Agencies will Invite Public Participation in the Process of Developing the Reports
- Often Only the Report will be Prepared by FWS. The State Wildlife Agency will Then Comment/Concur

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Supervisory Official
of Energy
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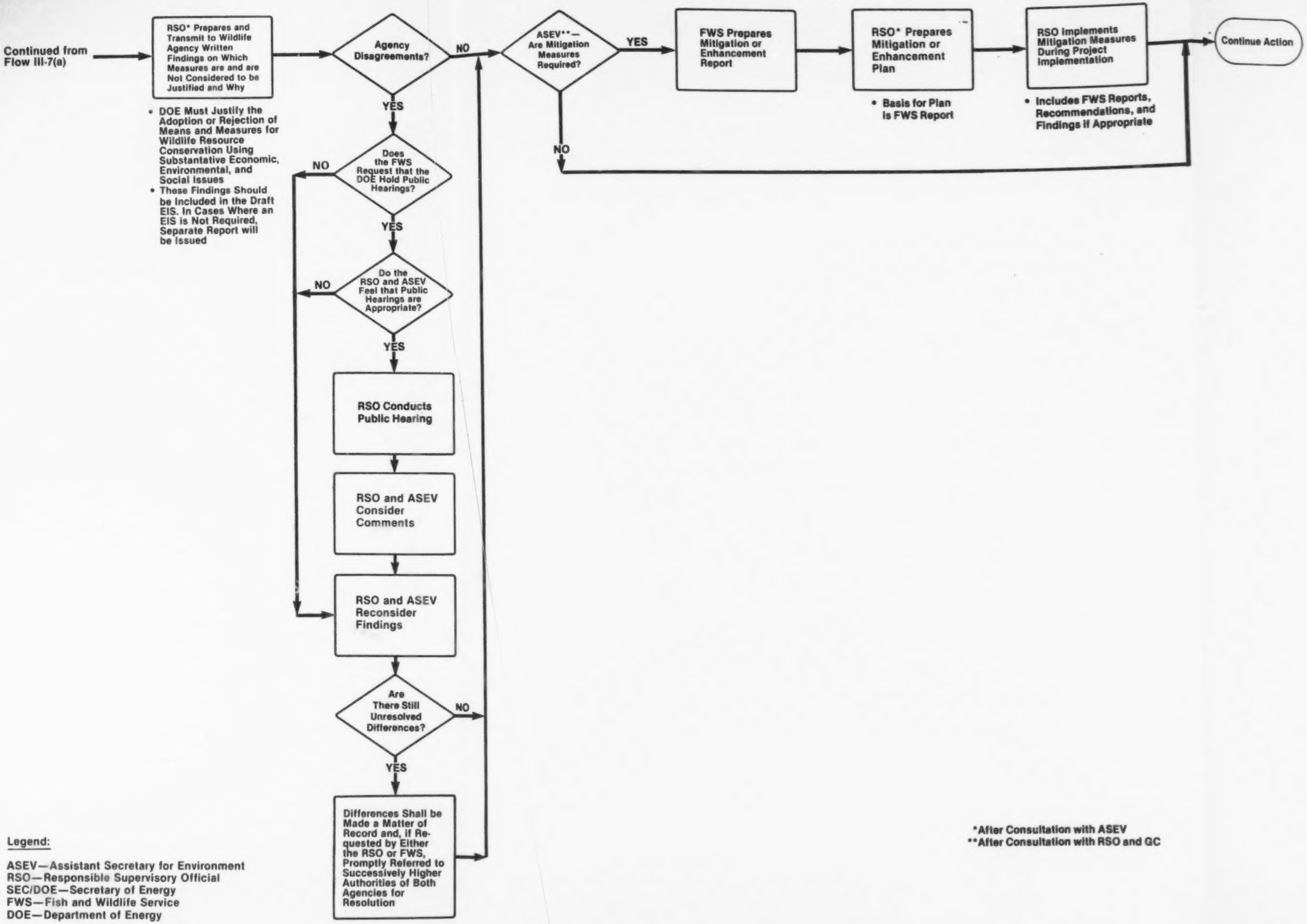
[1] If a Corps of Engineers or Environmental Protection Agency Permit is Required, They will Become the Lead Agency Responsible for Compliance with FWCA.

[2] Fish & Wildlife Service = National Marine Fisheries Service

*After Consultation with ASEV and GC


Continued from Flow III-7(a)
RSO* Prepares and Transmit to Wildlife Agency Written Findings on Which Measures are and are Not Considered to be Justified and Why
• DOE Must Justify the Adoption or Rejection of Means and Measures for Wildlife Resource Conservation Using Substantative Economic, Environmental, and Social Issues
• These Findings Should be Included in the Draft EIS. In Cases Where an EIS is Not Required, Separate Report will be Issued
Agency Disagreements?
NO
YES
Does the FWS Request that the DOE Hold Public Hearings?
NO
YES
Do the RSO and ASEV Feel that Public Hearings are Appropriate?
NO
YES
RSO Conducts Public Hearing
RSO and ASEV Consider Comments
RSO and ASEV Reconsider Findings
Are There Still Unresolved Differences?
NO
YES
Differences Shall be Made a Matter of Record and, if Requested by Either the RSO or FWS, Promptly Referred to Successively Higher Authorities of Both Agencies for Resolution
ASEV**— Are Mitigation Measures Required?
YES
NO
FWS Prepares Mitigation or Enhancement Report
RSO* Prepares Mitigation or Enhancement Plan
• Basis for Plan is FWS Report
RSO Implements Mitigation Measures During Project Implementation
• Includes FWS Reports, Recommendations, and Findings if Appropriate
Continue Action

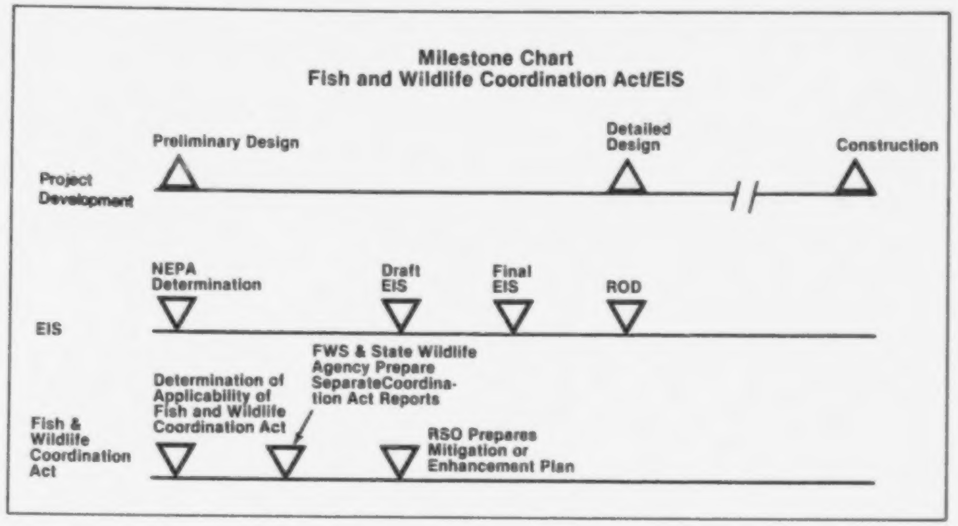
Legend:

ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
SEC/DOE—Secretary of Energy
FWS—Fish and Wildlife Service
DOE—Department of Energy

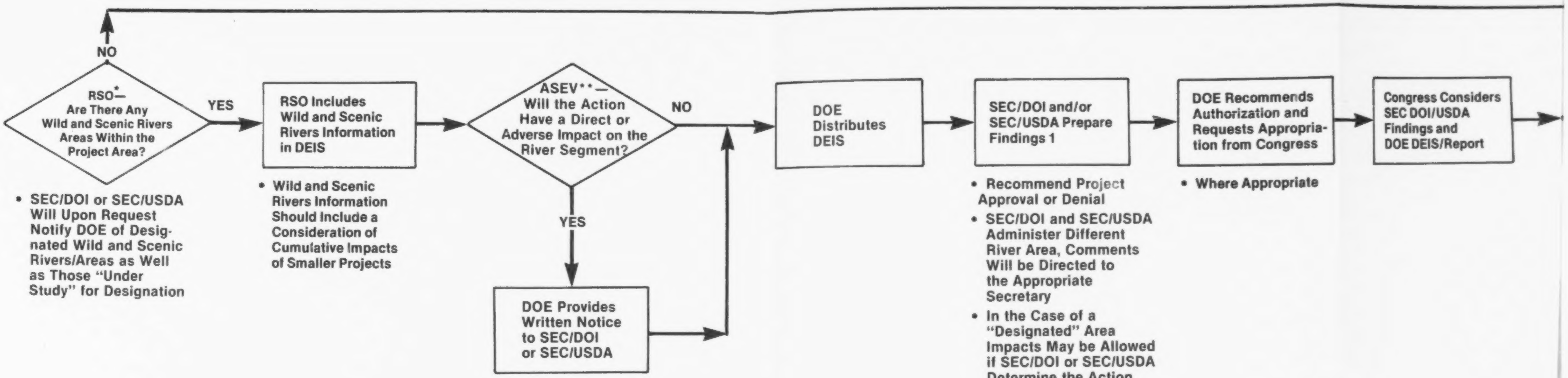
*After Consultation with ASEV
**After Consultation with RSO and GC

Continue Action

FLOW III-7(b)
DOE COMPLIANCE WITH THE FISH AND WILDLIFE COORDINATION ACT
50 CFR 410


Milestone Chart
Fish and Wildlife Coordination Act/EIS

Project Development
Preliminary Design
Detailed Design
Construction
EIS
NEPA Determination
Draft EIS
Final EIS
ROD
Fish & Wildlife Coordination Act
Determination of Applicability of Fish and Wildlife Coordination Act
FWS & State Wildlife Agency Prepare SeparateCoordination Act Reports
RSO Prepares Mitigation or Enhancement Plan


NO
RSO*— Are There Any Wild and Scenic Rivers Areas Within the Project Area?
YES
RSO Includes Wild and Scenic Rivers Information in DEIS
ASEV**— Will the Action Have a Direct or Adverse Impact on the River Segment?
NO
YES
DOE Provides Written Notice to SEC/DOI or SEC/USDA
DOE Distributes DEIS
SEC/DOI and/or SEC/USDA Prepare Findings 1
DOE Recommends Authorization and Requests Appropriation from Congress
Congress Considers SEC DOI/USDA Findings and DOE DEIS/Report

- SEC/DOI or SEC/USDA Will Upon Request Notify DOE of Designated Wild and Scenic Rivers/Areas as Well as Those "Under Study" for Designation

- Wild and Scenic Rivers Information Should Include a Consideration of Cumulative Impacts of Smaller Projects

- Recommend Project Approval or Denial
- SEC/DOI and SEC/USDA Administer Different River Area, Comments Will be Directed to the Appropriate Secretary
- In the Case of a "Designated" Area Impacts May be Allowed if SEC/DOI or SEC/USDA Determine the Action Will Not Cause an Unreasonable Diminishment. In an Area "Under Study" for Designation, No Degradation is Permitted.
- Where the Proposed Action Would Take Place in an Otherwise Prohibited Area, DOE Must Seek Special Authorization from Congress.

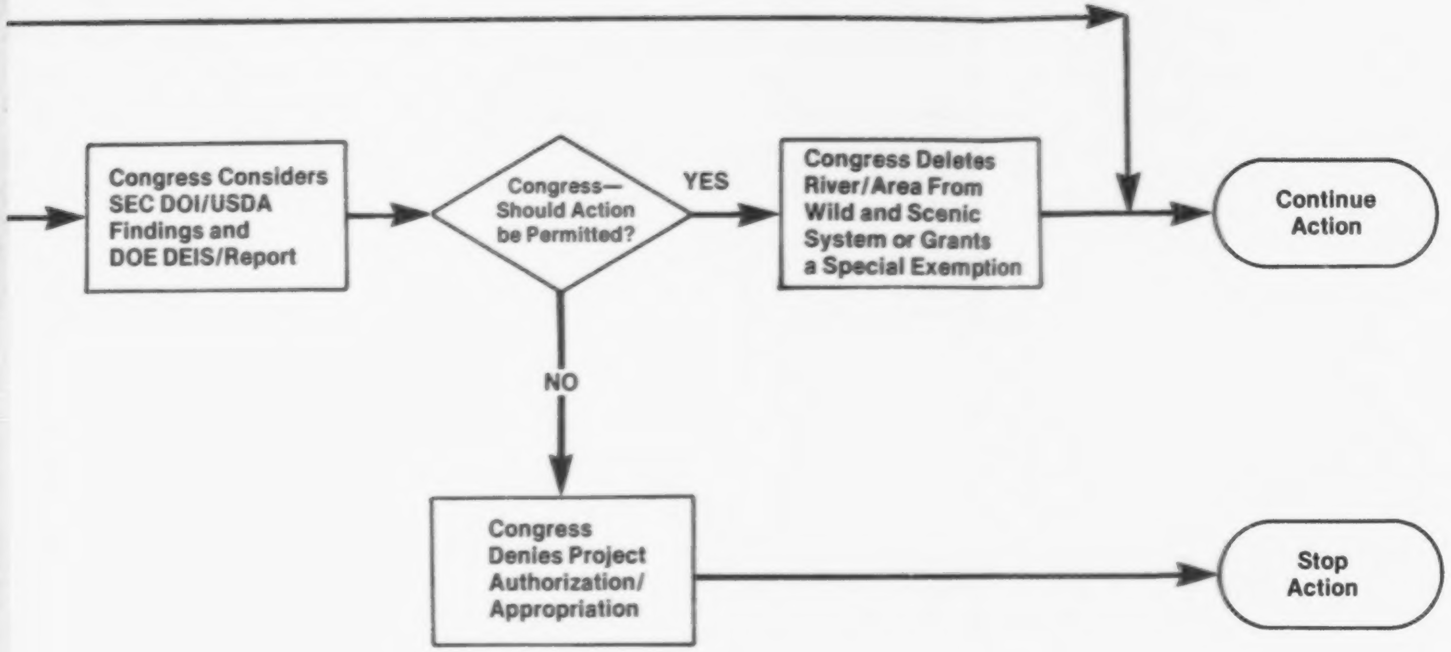
- Where Appropriate

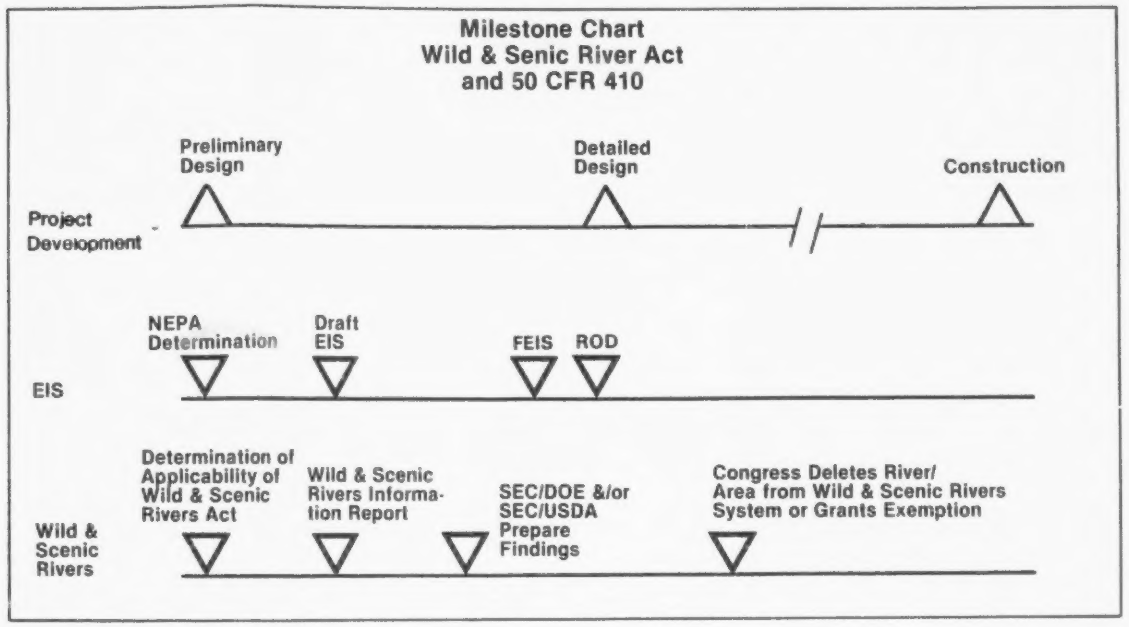
Legend:

ASEV—Assistant Secretary for Environment
SEC/DOI—Secretary, Department of Interior
SEC/USDA—Secretary, Department of Agriculture
RSO—Responsible Supervisory Official
GC—General Counsel

*After Consultation with ASEV
**After Consultation with RSO and GC

FLOW III-8
DOE COMPLIANCE WITH THE WILD AND SCENIC RIVERS ACT
16 USC 1271

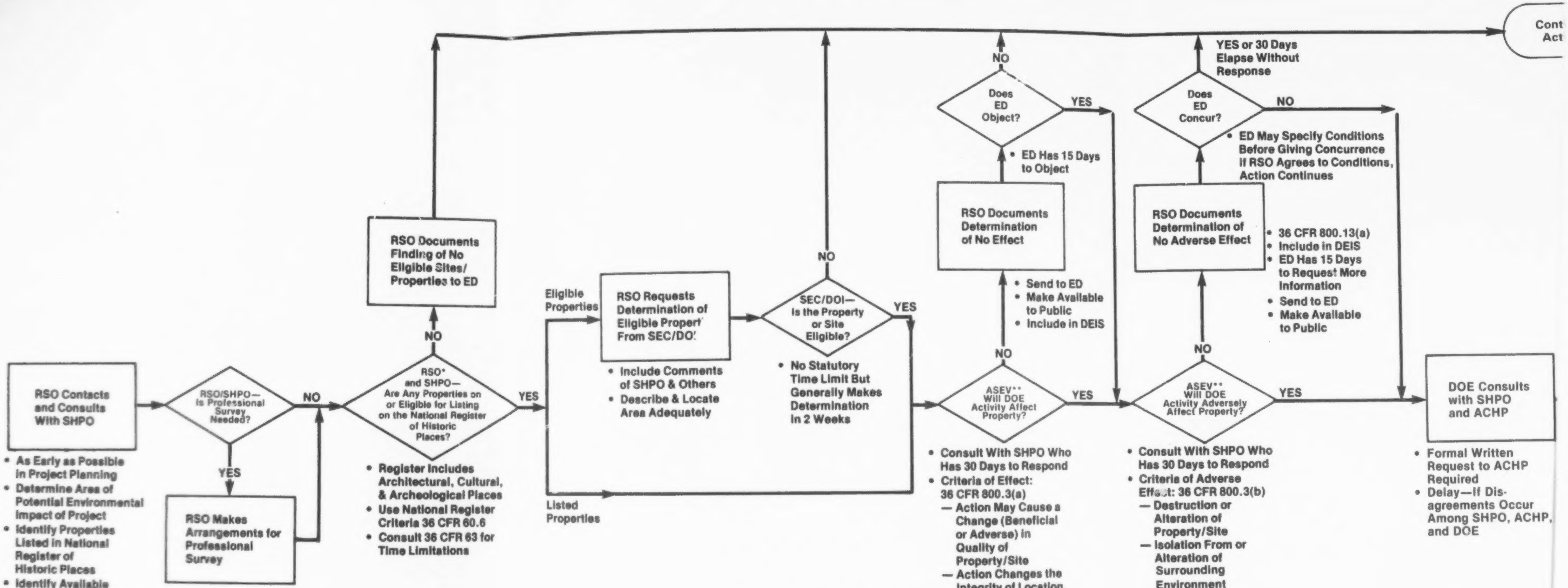

Congress Considers SEC DOI/USDA Findings and DOE DEIS/Report
Congress— Should Action be Permitted?
YES
Congress Deletes River/Area From Wild and Scenic System or Grants a Special Exemption
Continue Action
NO
Congress Denies Project Authorization/ Appropriation
Stop Action



Construction Cannot be Started Until Congress Either Grants an Exemption for the Project or Deletes Area From the Wild & Scenic Rivers System

1. The SEC/DOI Has, for Certain Wild and Scenic Rivers/Areas Delegated His Responsibilities to: The Bureau of Land Management; The National Park Service; and The U.S. Army Corps of Engineers. The SEC/USDA Has Delegated His Responsibilities to the U.S. Forest Service.

FLOW III-9
HISTORIC PRESERVATION


RSO Contacts and Consults With SHPO
RSO/SHPO— Is Professional Survey Needed?
YES
RSO Makes Arrangements for Professional Survey
NO
RSO* and SHPO— Are Any Properties on or Eligible for Listing on the National Register of Historic Places?
NO
RSO Documents Finding of No Eligible Sites/Properties to ED
YES
Eligible Properties
Listed Properties
RSO Requests Determination of Eligible Propert' From SEC/DO!
SEC/DOI— Is the Property or Site Eligible?
NO
YES
ASEV** Will DOE Activity Affect Property?
NO
RSO Documents Determination of No Effect
Does ED Object?
NO
YES
YES
ASEV** Will DOE Activity Adversely Affect Property?
NO
RSO Documents Determination of No Adverse Effect
Does ED Concur?
YES or 30 Days Elapse Without Response
NO
YES
DOE Consults with SHPO and ACHP
Cont
Act

- As Early as Possible in Project Planning
- Determine Area of Potential Environmental Impact of Project
- Identify Properties Listed in National Register of Historic Places
- Identify Available Information on Known Historic Properties/Sites
- Contact Historical Societies and Local Agencies
- Assess Need for Professional Survey

- Application Divided into Two Parts:
  — Part A is More General and Largely Non-technical. Part B will be More Specific and Largely Technical

- Register Includes Architectural, Cultural, & Archeological Places
- Use National Register Criteria 36 CFR 60.6
- Consult 36 CFR 63 for Time Limitations

- Include Comments of SHPO & Others
- Describe & Locate Area Adequately

- No Statutory Time Limit But Generally Makes Determination in 2 Weeks

- Send to ED
- Make Available to Public
- Include in DEIS

- ED Has 15 Days to Object

- Consult With SHPO Who Has 30 Days to Respond
- Criteria of Effect: 36 CFR 800.3(a)
  — Action May Cause a Change (Beneficial or Adverse) in Quality of Property/Site
  — Action Changes the Integrity of Location, Design, Setting, Workmanship, Feeling or Association of Property/Site
  — Action Causes an Indirect Effect Such as Changes in Population Growth or Land Use That May Affect Historic Sites

- 36 CFR 800.13(a)
- Include in DEIS
- ED Has 15 Days to Request More Information
- Send to ED
- Make Available to Public

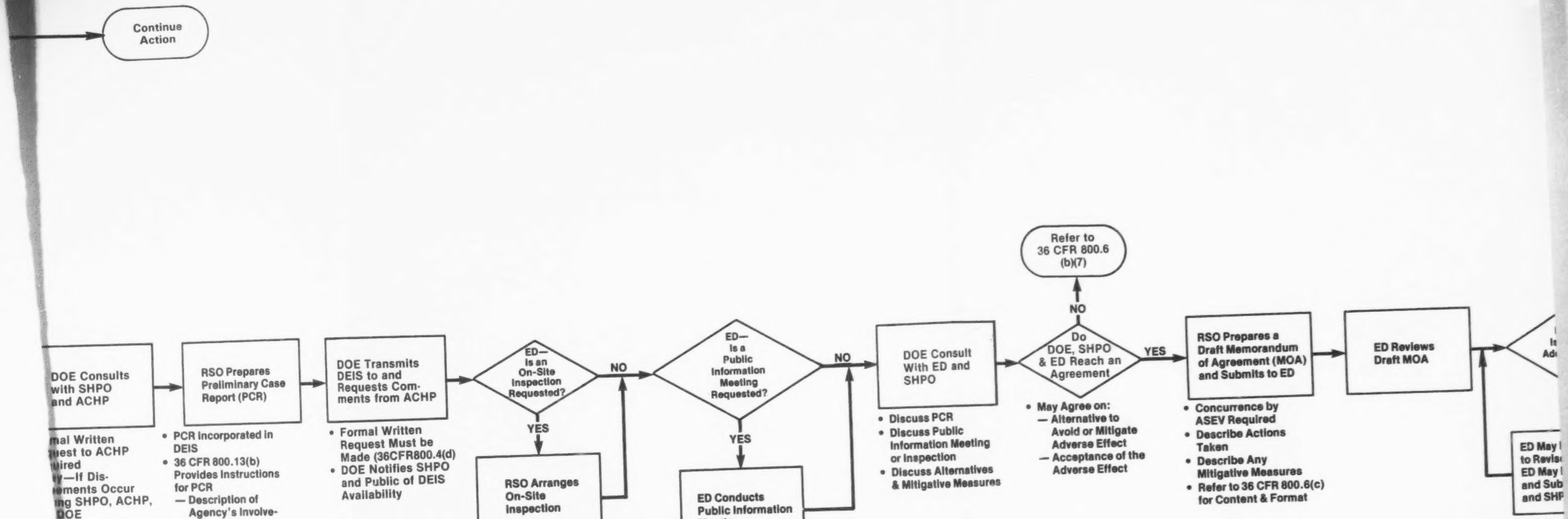
- ED May Specify Conditions Before Giving Concurrence If RSO Agrees to Conditions, Action Continues

- Consult With SHPO Who Has 30 Days to Respond
- Criteria of Adverse Effect: 36 CFR 800.3(b)
  — Destruction or Alteration of Property/Site
  — Isolation From or Alteration of Surrounding Environment
  — Introduction of Visual, Audible, or Atmospheric Conditions Out of Character With Site/Property
  — Neglect of Property/Site
  — Transfer or Sale of Property Without Adequate Conditions for Preservation, Maintenance, or Use

- Formal Written Request to ACHP Required
- Delay—If Disagreements Occur Among SHPO, ACHP, and DOE

Legend:

RSO—Responsible Supervisory Official
SHPO—State Historical Preservation Officer
SEC/DOI—Secretary of the Department of the Interior
ED—Executive Director of the Advisory Council
ACHP—Advisory Council on Historic Preservation
Chairman—Chairman of ACHP
PCR—Preliminary Case Report
Members—Member of ACHP
ASEV—Assistant Secretary for Environment
MOA—Memorandum of Agreement
GC—General Counsel


Continue Action
DOE Consults with SHPO and ACHP
RSO Prepares Preliminary Case Report (PCR)
DOE Transmits DEIS to and Requests Comments from ACHP
ED—Is an On-Site Inspection Requested?
NO
YES
RSO Arranges On-Site Inspection
ED—Is a Public Information Meeting Requested?
NO
YES
ED Conducts Public Information Meeting
DOE Consult With ED and SHPO
Do DOE, SHPO & ED Reach an Agreement
NO
Refer to 36 CFR 800.6 (b)(7)
YES
RSO Prepares a Draft Memorandum of Agreement (MOA) and Submits to ED
ED Reviews Draft MOA
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- PCR Incorporated in DEIS
- 36 CFR 800.13(b) Provides Instructions for PCR
  - — Description of Agency's Involvement With Proposed Action
  - — Status of Project in DOE's Approval Process
  - — Status of Project in NEPA Process
  - — Description of Proposed Project (Photos, Maps, Drawings, Specifications)
  - — Description of All Historic Properties Listed or Eligible for Listing in National Register
  - — State Why Criteria of Adverse Effect Apply
  - — Written Views of SHPO & Others
  - — Description & Analysis of Alternatives
  - — Description & Analysis of Mitigative Measures
  - — Estimate of Cost of Proposed Action

- Formal Written Request Must be Made (36CFR800.4(d)
- DOE Notifies SHPO and Public of DEIS Availability

- Inspection Can be Requested by RSO, SHPO, or ACHP

- Public Information Meeting Is Generally Not Held With the EIS Hearing (May be Coordinated [Held Back-to-Back] With EIS Hearing)
- RSO Prepares Public Notice and Makes Arrangements for Meeting
- RSO, SHPO, or ACHP Can Request Meeting

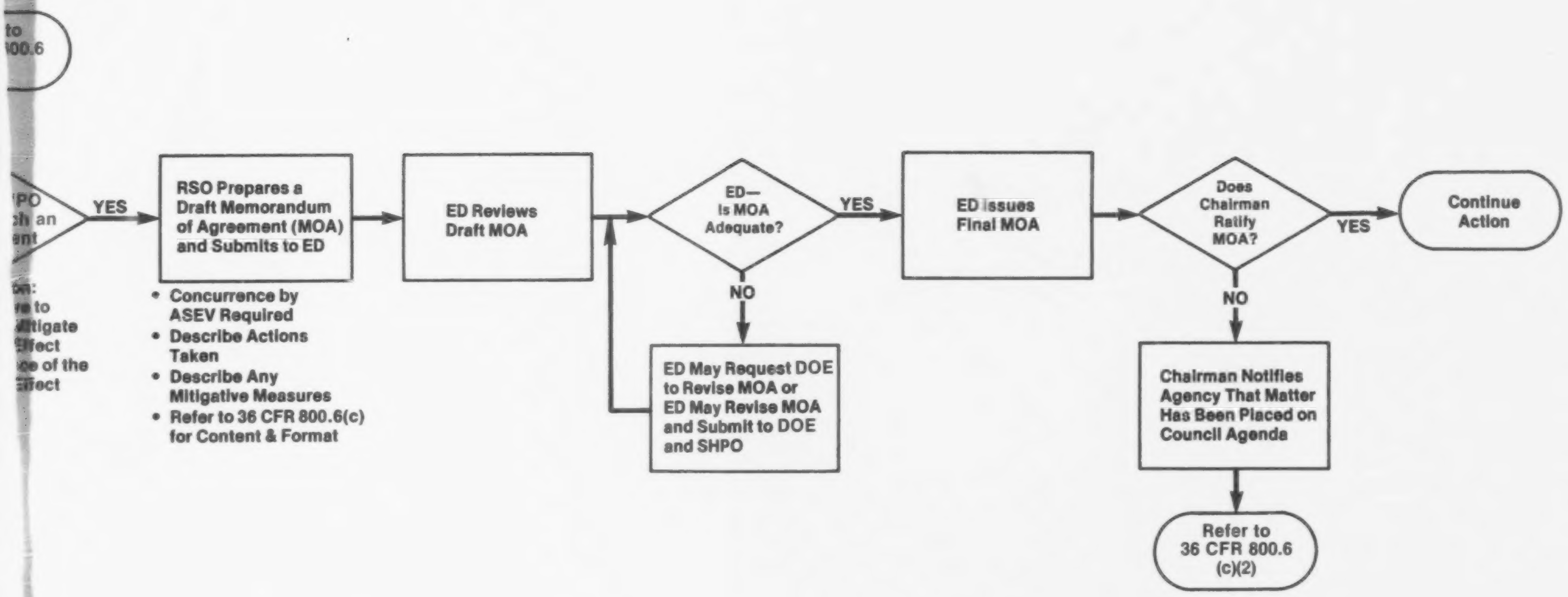
- Discuss PCR
- Discuss Public Information Meeting or Inspection
- Discuss Alternatives & Mitigative Measures

- May Agree on:
  - — Alternative to Avoid or Mitigate Adverse Effect
  - — Acceptance of the Adverse Effect

- Concurrence by ASEV Required
- Describe Actions Taken
- Describe Any Mitigative Measures
- Refer to 36 CFR 800.6(c) for Content & Format

*After Consultation With ASEV
**After Consultation With RSO and GC

FLOW III-9
DOE COMPLIANCE WITH NATIONAL HISTORIC PRESERVATION ACT (E.O. 11593 AND 36 CFR 800)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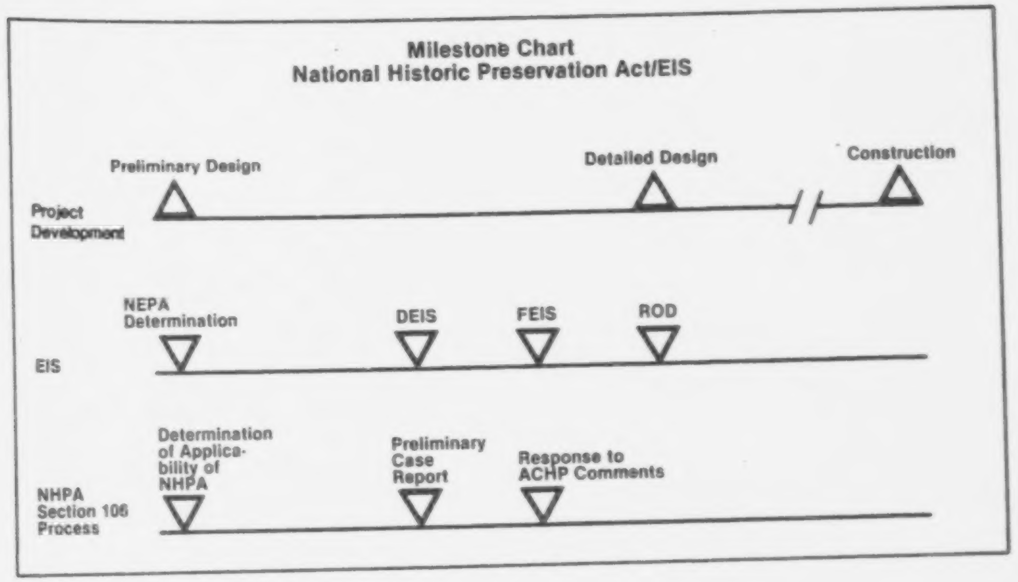
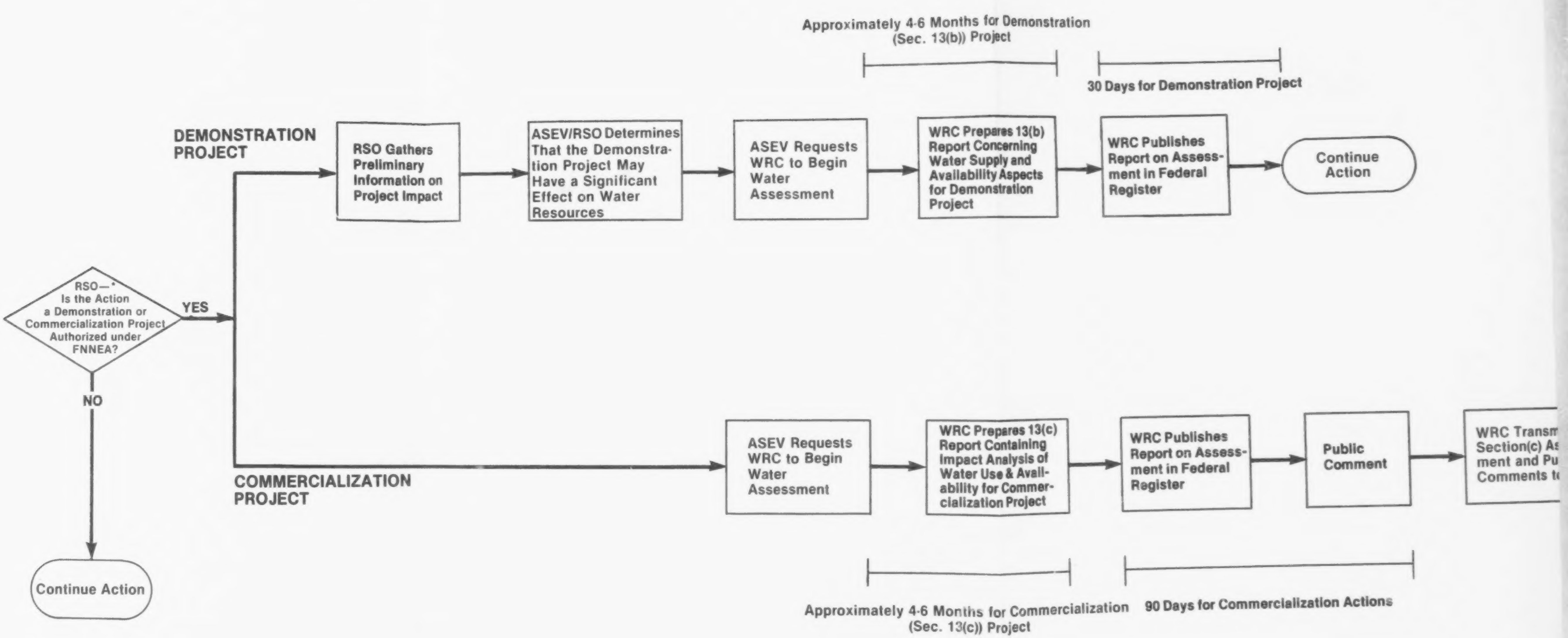
Effect
RSO Prepares a Draft Memorandum of Agreement (MOA) and Submits to ED
• Concurrence by ASEV Required
• Describe Actions Taken
• Describe Any Mitigative Measures
• Refer to 36 CFR 800.6(c) for Content & Format
ED Reviews Draft MOA
ED— Is MOA Adequate?
YES
NO
ED May Request DOE to Revise MOA or ED May Revise MOA and Submit to DOE and SHPO
ED Issues Final MOA
Does Chairman Ratify MOA?
YES
Continue Action
NO
Chairman Notifies Agency That Matter Has Been Placed on Council Agenda
Refer to 36 CFR 800.6 (c)(2)


Milestone Chart
National Historic Preservation Act/EIS

When an Adverse Impact Is Identified, Construction Activity in the Area in Question Cannot Take Place Until an MOA Is Ratified or the Full Consultation Process Is Completed.

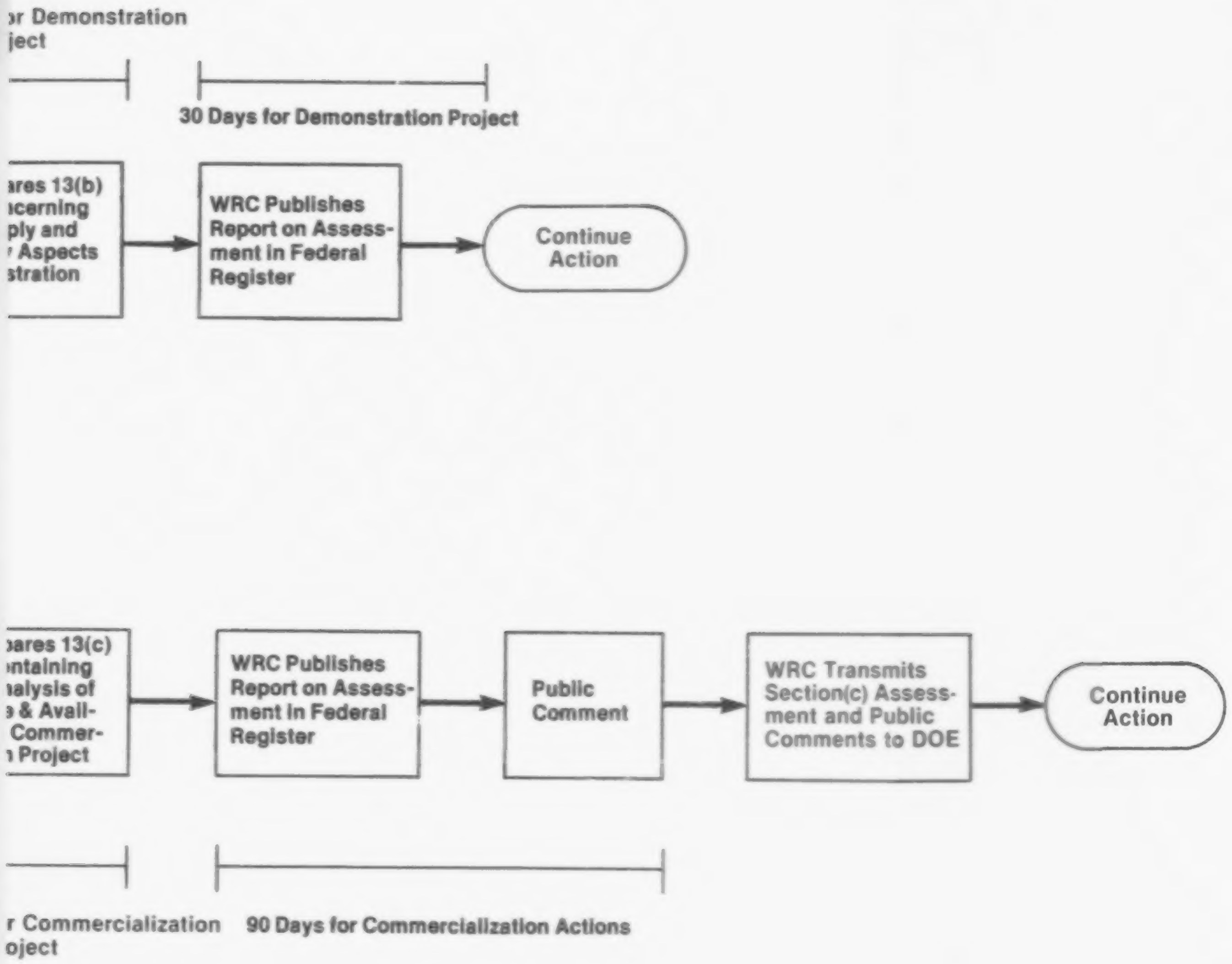
FLOW III-10
WATER RESOURCES COUNCIL


Approximately 4-6 Months for Demonstration (Sec. 13(b)) Project
30 Days for Demonstration Project
DEMONSTRATION PROJECT
RSO Gathers Preliminary Information on Project Impact
ASEV/RSO Determines That the Demonstration Project May Have a Significant Effect on Water Resources
ASEV Requests WRC to Begin Water Assessment
WRC Prepares 13(b) Report Concerning Water Supply and Availability Aspects for Demonstration Project
WRC Publishes Report on Assessment in Federal Register
Continue Action
RSO—* Is the Action a Demonstration or Commercialization Project Authorized under FNNEA?
YES
NO
Continue Action
COMMERCIALIZATION PROJECT
ASEV Requests WRC to Begin Water Assessment
WRC Prepares 13(c) Report Containing Impact Analysis of Water Use & Availability for Commercialization Project
WRC Publishes Report on Assessment in Federal Register
Public Comment
WRC Transm Section(c) As ment and Pu Comments t
Approximately 4-6 Months for Commercialization (Sec. 13(c)) Project
90 Days for Commercialization Actions

Legend:

ASEV—Assistant Secretary for Environment
RSO—Responsible Supervisory Official
ASEV/RSO—ASEV Has Lead Responsibility; RSO Has Assistance Responsibility
WRC—Water Resources Council
FNNEA—Federal Non-Nuclear Research and Development Act

*After Consultation with ASEV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30 Days for Demonstration Project
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WRC Publishes Report on Assessment in Federal Register
Continue Action
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Project
WRC Publishes Report on Assessment in Federal Register
Public Comment
WRC Transmits Section(c) Assessment and Public Comments to DOE
Continue Action
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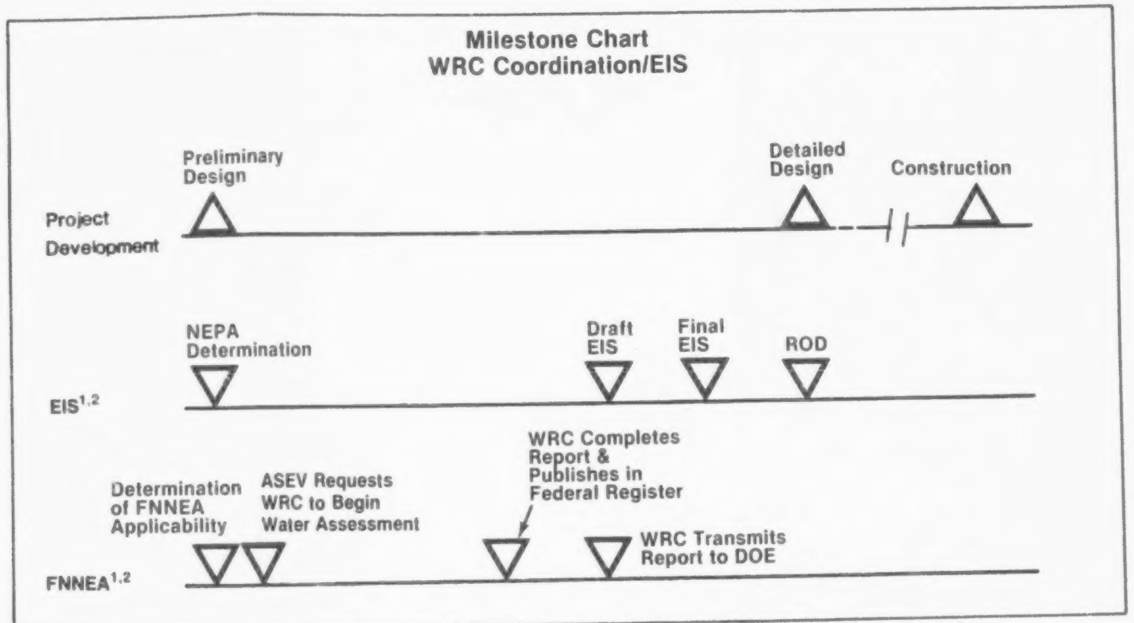
90 Days for Commercialization Actions

ASEV

FLOW III-10
DOE COMPLIANCE WITH THE FEDERAL NONNUCLEAR RESEARCH AND DEVELOPMENT ACT SECTION 13(b) & (c) P.L. 93-577 AMENDED


Milestone Chart
WRC Coordination/EIS
Preliminary Design
Detailed Design
Construction
Project Development
NEPA Determination
Draft EIS
Final EIS
ROD
EIS[1,2]
WRC Completes Report & Publishes in Federal Register
Determination of FNNEA Applicability
ASEV Requests WRC to Begin Water Assessment
WRC Transmits Report to DOE
FNNEA[1,2]

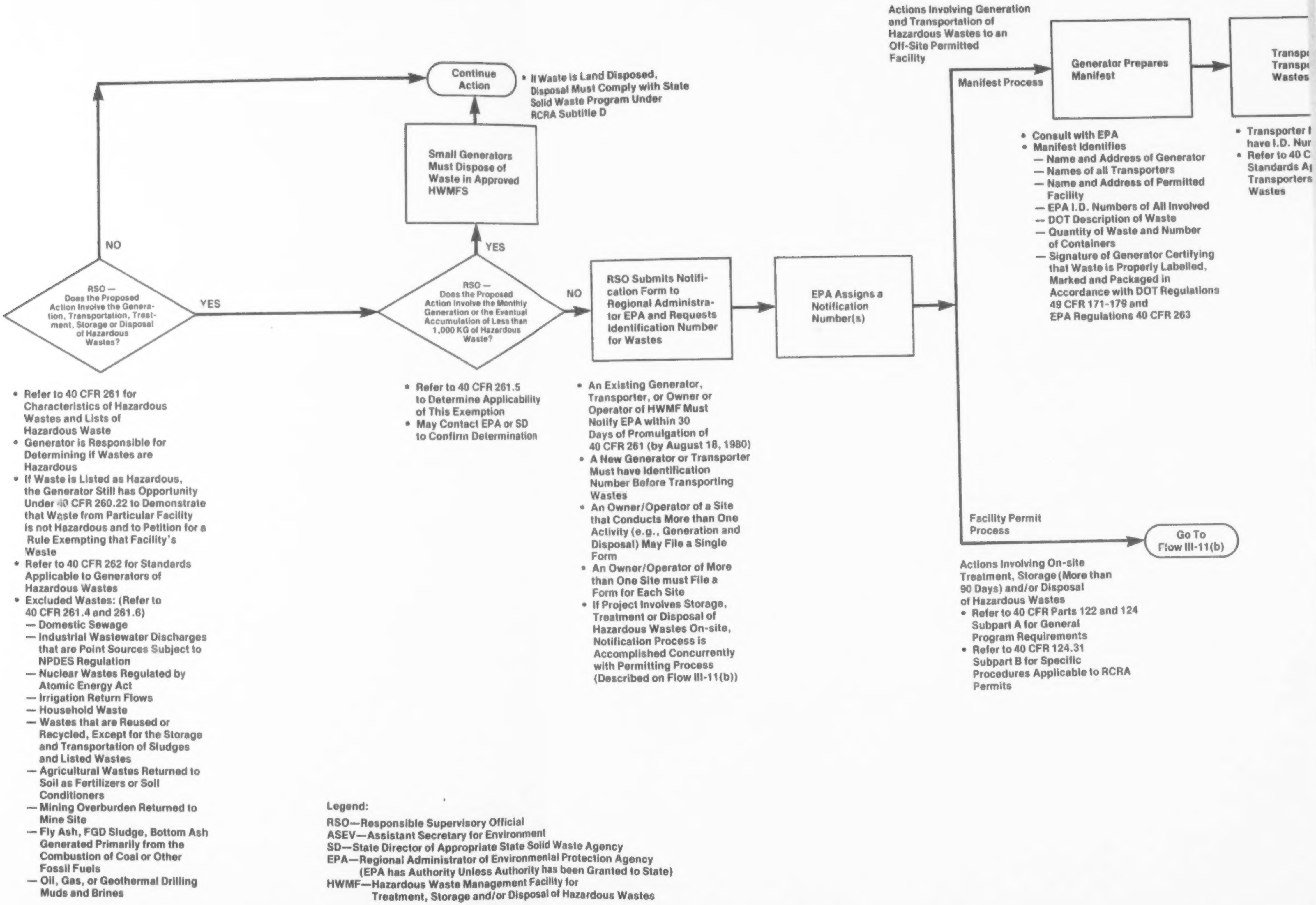
[1] There is No Mandatory Linkage Between NEPA & FNNEA Document. However, the Water Assessment Report Should be Available for Public Comment at the Same Time as the DEIS.

[2] Commercialization Activities Authorized Under the FNNEA may Differ From the General Case Shown Above With Respect to the Timing Relationship Between the NEPA Process, WRC Water Assessment and the Project Development Sequence. Where a Commercialization Project has Proceeded Beyond the Start of Detailed Design Before DOE Involvement, the NEPA Review Process and the WRC Water Assessment Report Must be Completed Before DOE Commits Funds for Site Specific Construction Activities or Takes Other Actions That Would Either: 1) Have an Adverse Environmental Impact or 2) Limit the Choice of Reasonable Alternatives.

For Demonstration Projects DOE may Only Give Financial Assistance 30 Days After a Report on the WRC Section 13(b) Assessment

For Commercialization Projects, DOE will not Disburse any Federal Funds for Construction, or for Site Specific Design That Results in a Commitment to a Project at a Specific Site Until the Completion of the Required Water Resources Assessment and 90 Day Public Review Period by the Water Resources Council Pursuant to Section 13(c) of FNNEA, and the Council has Transmitted the Section (C) Assessment and Comments to DOE

FLOW III-11
RESOURCE CONSERVATION
AND RECOVERY


RSO — Does the Proposed Action Involve the Generation, Transportation, Treatment, Storage or Disposal of Hazardous Wastes?
NO
YES
Continue Action
Small Generators Must Dispose of Waste in Approved HWMFS
YES
RSO — Does the Proposed Action Involve the Monthly Generation or the Eventual Accumulation of Less than 1,000 KG of Hazardous Waste?
NO
RSO Submits Notification Form to Regional Administrator EPA and Requests Identification Number for Wastes
EPA Assigns a Notification Number(s)
Manifest Process
Generator Prepares Manifest
Transp
Transp
Wastes
Facility Permit Process
Go To Flow III-11(b)

- If Waste is Land Disposed, Disposal Must Comply with State Solid Waste Program Under RCRA Subtitle D

- Refer to 40 CFR 261 for Characteristics of Hazardous Wastes and Lists of Hazardous Waste
- Generator is Responsible for Determining if Wastes are Hazardous
- If Waste is Listed as Hazardous, the Generator Still has Opportunity Under 40 CFR 260.22 to Demonstrate that Waste from Particular Facility is not Hazardous and to Petition for a Rule Exempting that Facility's Waste
- Refer to 40 CFR 262 for Standards Applicable to Generators of Hazardous Wastes
- Excluded Wastes: (Refer to 40 CFR 261.4 and 261.6)
  - — Domestic Sewage
  - — Industrial Wastewater Discharges that are Point Sources Subject to NPDES Regulation
  - — Nuclear Wastes Regulated by Atomic Energy Act
  - — Irrigation Return Flows
  - — Household Waste
  - — Wastes that are Reused or Recycled, Except for the Storage and Transportation of Sludges and Listed Wastes
  - — Agricultural Wastes Returned to Soil as Fertilizers or Soil Conditioners
  - — Mining Overburden Returned to Mine Site
  - — Fly Ash, FGD Sludge, Bottom Ash Generated Primarily from the Combustion of Coal or Other Fossil Fuels
  - — Oil, Gas, or Geothermal Drilling Muds and Brines

- Refer to 40 CFR 261.5 to Determine Applicability of This Exemption
- May Contact EPA or SD to Confirm Determination

- An Existing Generator, Transporter, or Owner or Operator of HWMF Must Notify EPA within 30 Days of Promulgation of 40 CFR 261 (by August 18, 1980)
- A New Generator or Transporter Must have Identification Number Before Transporting Wastes
- An Owner/Operator of a Site that Conducts More than One Activity (e.g., Generation and Disposal) May File a Single Form
- An Owner/Operator of More than One Site must File a Form for Each Site
- If Project Involves Storage, Treatment or Disposal of Hazardous Wastes On-site, Notification Process is Accomplished Concurrently with Permitting Process (Described on Flow III-11(b))

Actions Involving Generation and Transportation of Hazardous Wastes to an Off-Site Permitted Facility

- Consult with EPA
- Manifest Identifies
  - — Name and Address of Generator
  - — Names of all Transporters
  - — Name and Address of Permitted Facility
  - — EPA I.D. Numbers of All Involved
  - — DOT Description of Waste
  - — Quantity of Waste and Number of Containers
  - — Signature of Generator Certifying that Waste is Properly Labelled, Marked and Packaged in Accordance with DOT Regulations 49 CFR 171-179 and EPA Regulations 40 CFR 263

- Transporter I
  have I.D. Nur
- Refer to 40 C
  Standards Ap
  Transporters
  Wastes

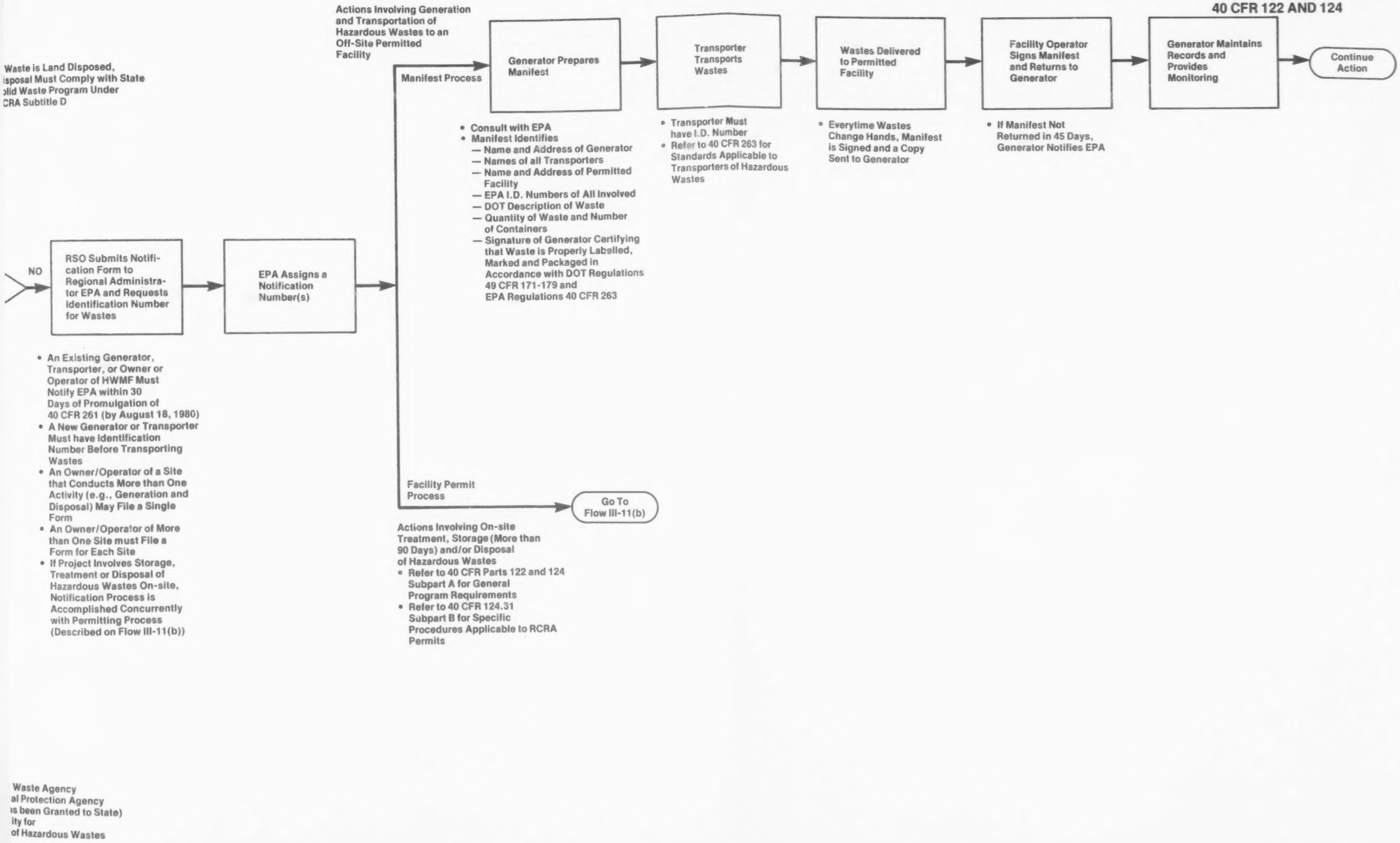
Actions Involving On-site Treatment, Storage (More than 90 Days) and/or Disposal of Hazardous Wastes

- Refer to 40 CFR Parts 122 and 124 Subpart A for General Program Requirements
- Refer to 40 CFR 124.31 Subpart B for Specific Procedures Applicable to RCRA Permits

Legend:

RSO—Responsible Supervisory Official
ASEV—Assistant Secretary for Environment
SD—State Director of Appropriate State Solid Waste Agency
EPA—Regional Administrator of Environmental Protection Agency
(EPA has Authority Unless Authority has been Granted to State)
HWMF—Hazardous Waste Management Facility for
Treatment, Storage and/or Disposal of Hazardous Wastes

FLOW III-11(a)
DOE COMPLIANCE WITH SUBTITLE C RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) 40 CFR 260 THROUGH 266 AND 40 CFR 122 AND 124


Waste is Land Disposed,
isposal Must Comply with State
olid Waste Program Under
CRA Subtitle D
NO
RSO Submits Notification Form to Regional Administrator EPA and Requests Identification Number for Wastes
EPA Assigns a Notification Number(s)
Actions Involving Generation and Transportation of Hazardous Wastes to an Off-Site Permitted Facility
Manifest Process
Generator Prepares Manifest
Transporter Transports Wastes
Wastes Delivered to Permitted Facility
Facility Operator Signs Manifest and Returns to Generator
Generator Maintains Records and Provides Monitoring
Continue Action
Facility Permit Process
Go To Flow III-11(b)

- Consult with EPA
- Manifest Identifies
  - — Name and Address of Generator
  - — Names of all Transporters
  - — Name and Address of Permitted Facility
  - — EPA I.D. Numbers of All Involved
  - — DOT Description of Waste
  - — Quantity of Waste and Number of Containers
  - — Signature of Generator Certifying that Waste is Properly Labelled, Marked and Packaged in Accordance with DOT Regulations 49 CFR 171-179 and EPA Regulations 40 CFR 263

- Transporter Must have I.D. Number
- Refer to 40 CFR 263 for Standards Applicable to Transporters of Hazardous Wastes

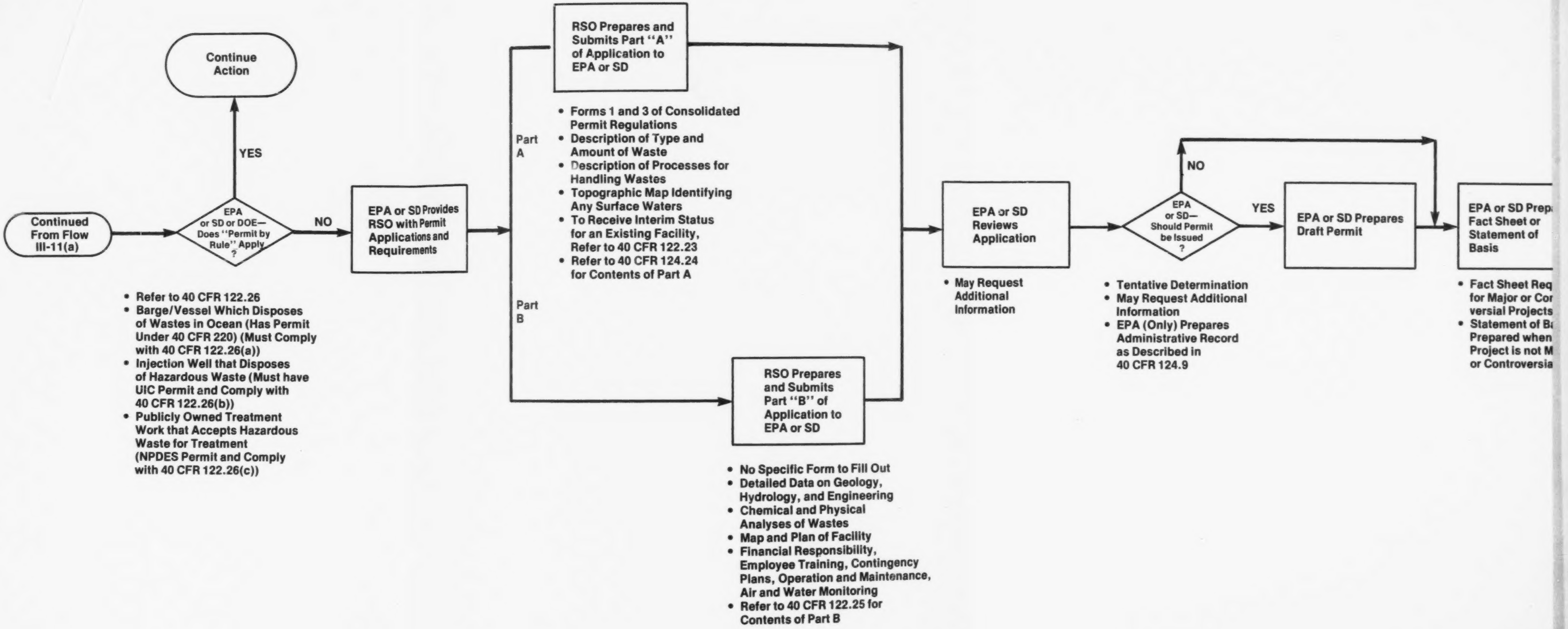
- Everytime Wastes Change Hands, Manifest is Signed and a Copy Sent to Generator

- If Manifest Not Returned in 45 Days, Generator Notifies EPA

- An Existing Generator, Transporter, or Owner or Operator of HWMF Must Notify EPA within 30 Days of Promulgation of 40 CFR 261 (by August 18, 1980)
- A New Generator or Transporter Must have Identification Number Before Transporting Wastes
- An Owner/Operator of a Site that Conducts More than One Activity (e.g., Generation and Disposal) May File a Single Form
- An Owner/Operator of More than One Site must File a Form for Each Site
- If Project Involves Storage, Treatment or Disposal of Hazardous Wastes On-site, Notification Process is Accomplished Concurrently with Permitting Process (Described on Flow III-11(b))

Actions Involving On-site Treatment, Storage (More than 90 Days) and/or Disposal of Hazardous Wastes
- Refer to 40 CFR Parts 122 and 124 Subpart A for General Program Requirements
- Refer to 40 CFR 124.31 Subpart B for Specific Procedures Applicable to RCRA Permits

Waste Agency
al Protection Agency
is been Granted to State)
ity for
of Hazardous Wastes


Continued From Flow III-11(a)
EPA or SD or DOE— Does "Permit by Rule" Apply ?
YES
Continue Action
NO
EPA or SD Provides RSO with Permit Applications and Requirements
Part A
Part B
RSO Prepares and Submits Part "A" of Application to EPA or SD
RSO Prepares and Submits Part "B" of Application to EPA or SD
EPA or SD Reviews Application
EPA or SD— Should Permit be Issued ?
NO
YES
EPA or SD Prepares Draft Permit
EPA or SD Prep
Fact Sheet or
Statement of
Basis

- Refer to 40 CFR 122.26
- Barge/Vessel Which Disposes of Wastes in Ocean (Has Permit Under 40 CFR 220) (Must Comply with 40 CFR 122.26(a))
- Injection Well that Disposes of Hazardous Waste (Must have UIC Permit and Comply with 40 CFR 122.26(b))
- Publicly Owned Treatment Work that Accepts Hazardous Waste for Treatment (NPDES Permit and Comply with 40 CFR 122.26(c))

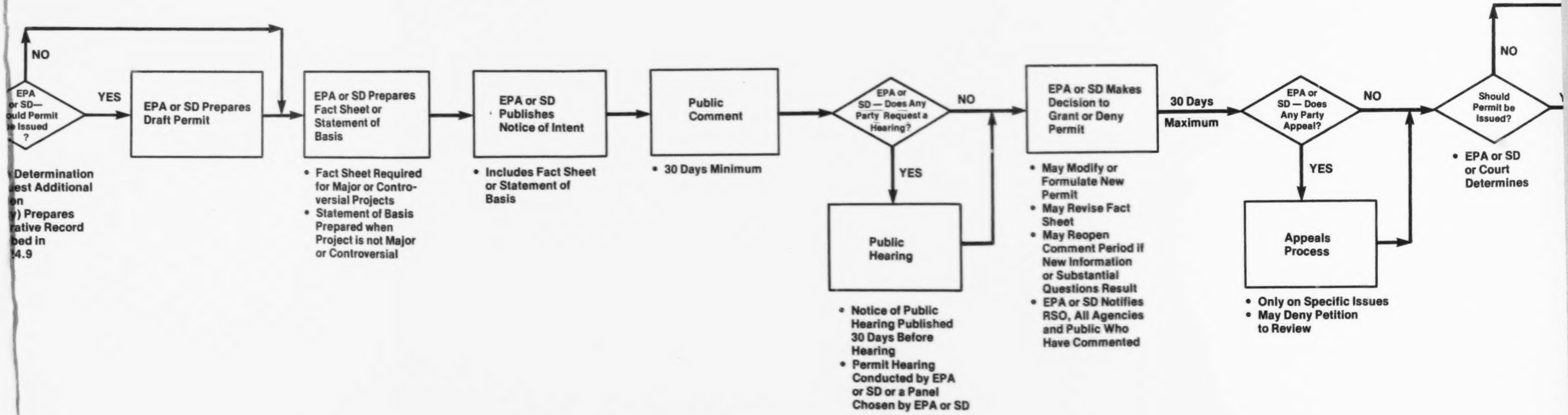
- Forms 1 and 3 of Consolidated Permit Regulations
- Description of Type and Amount of Waste
- Description of Processes for Handling Wastes
- Topographic Map Identifying Any Surface Waters
- To Receive Interim Status for an Existing Facility, Refer to 40 CFR 122.23
- Refer to 40 CFR 124.24 for Contents of Part A

- No Specific Form to Fill Out
- Detailed Data on Geology, Hydrology, and Engineering
- Chemical and Physical Analyses of Wastes
- Map and Plan of Facility
- Financial Responsibility, Employee Training, Contingency Plans, Operation and Maintenance, Air and Water Monitoring
- Refer to 40 CFR 122.25 for Contents of Part B

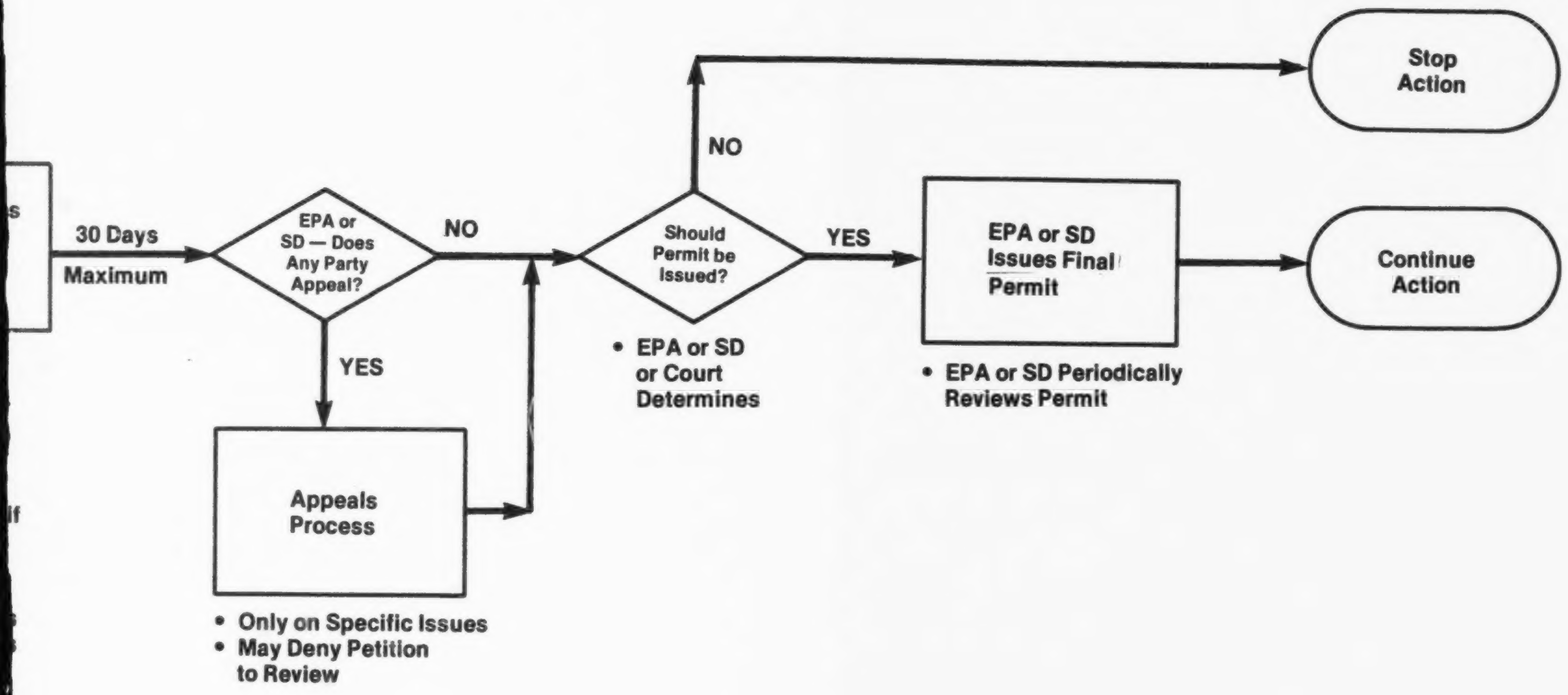
- May Request Additional Information

- Tentative Determination
- May Request Additional Information
- EPA (Only) Prepares Administrative Record as Described in 40 CFR 124.9

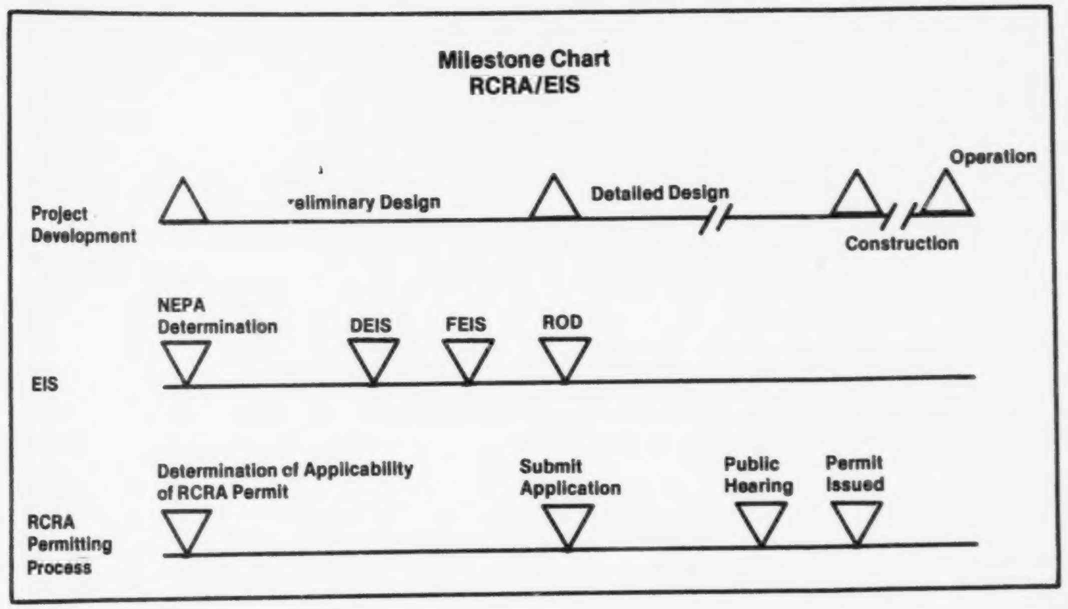
- Fact Sheet Req
  for Major or Cor
  versial Projects
- Statement of B
  Prepared when
  Project is not M
  or Controversia


NO
EPA
or SD—
uld Permit
e Issued
?
YES
Determination
est Additional
on
) Prepares
rative Record
bed in
4.9
EPA or SD Prepares Draft Permit
EPA or SD Prepares Fact Sheet or Statement of Basis
• Fact Sheet Required for Major or Controversial Projects
• Statement of Basis Prepared when Project is not Major or Controversial
EPA or SD Publishes Notice of Intent
• Includes Fact Sheet or Statement of Basis
Public Comment
• 30 Days Minimum
EPA or SD — Does Any Party Request a Hearing?
NO
YES
Public Hearing
• Notice of Public Hearing Published 30 Days Before Hearing
• Permit Hearing Conducted by EPA or SD or a Panel Chosen by EPA or SD
EPA or SD Makes Decision to Grant or Deny Permit
• May Modify or Formulate New Permit
• May Revise Fact Sheet
• May Reopen Comment Period if New Information or Substantial Questions Result
• EPA or SD Notifies RSO, All Agencies and Public Who Have Commented
30 Days
Maximum
EPA or SD — Does Any Party Appeal?
NO
YES
Appeals Process
• Only on Specific Issues
• May Deny Petition to Review
NO
Should Permit be Issued?
• EPA or SD or Court Determines

FLOW III-11(b)
DOE COMPLIANCE WITH SUBTITLE C OF RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)
40 CFR 260 THROUGH 266
AND
40 CFR 122 AND 124



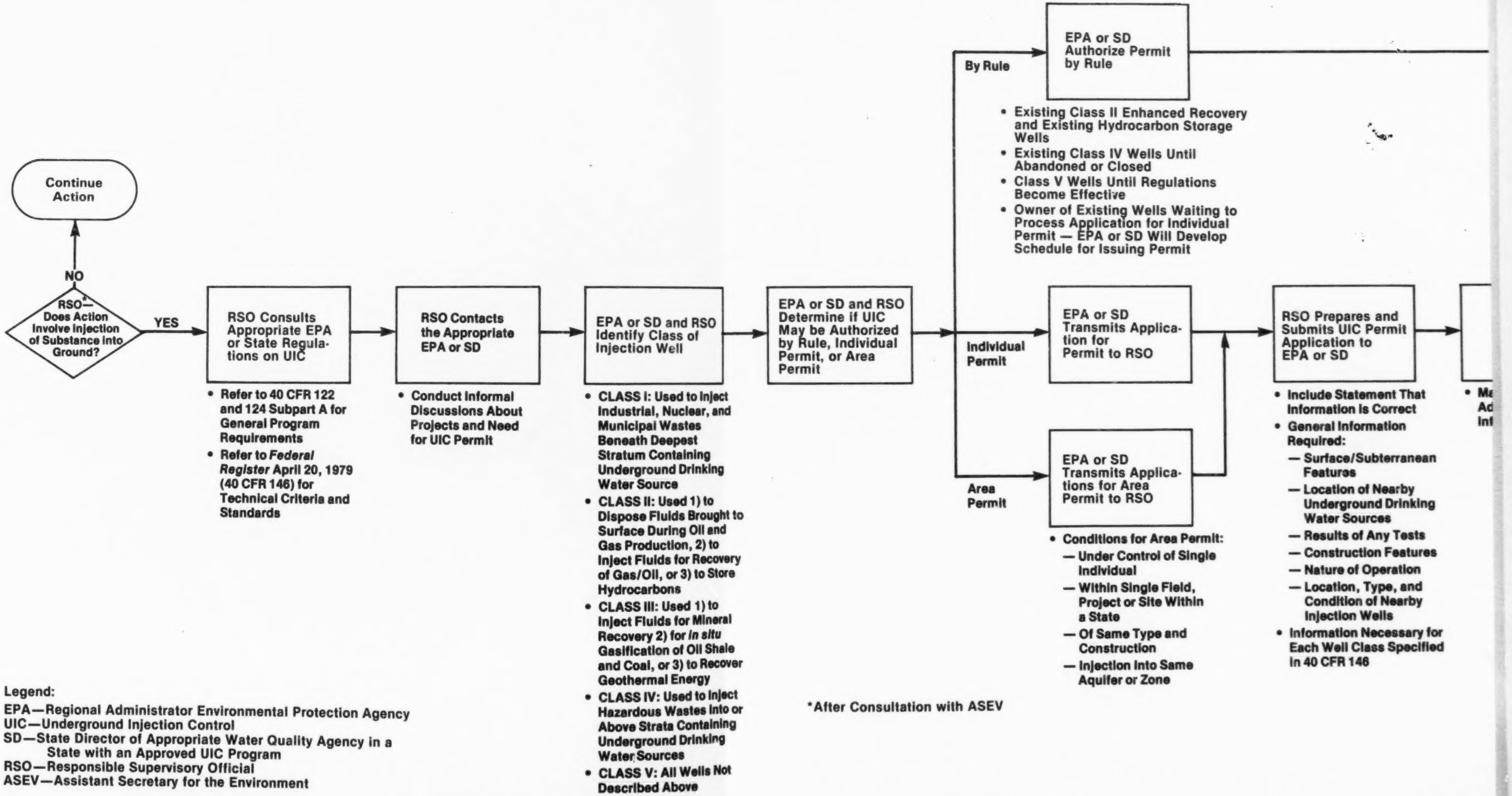
30 Days
Maximum
EPA or SD — Does Any Party Appeal?
NO
YES
Appeals Process
• Only on Specific Issues
• May Deny Petition to Review
Should Permit be Issued?
NO
YES
• EPA or SD or Court Determines
Stop Action
EPA or SD Issues Final Permit
• EPA or SD Periodically Reviews Permit
Continue Action



Milestone Chart
RCRA/EIS
Project Development
Preliminary Design
Detailed Design
Construction
Operation
EIS
NEPA Determination
DEIS
FEIS
ROD
RCRA Permitting Process
Determination of Applicability of RCRA Permit
Submit Application
Public Hearing
Permit Issued

No Construction of Hazardous Waste Treatment, Storage, or Disposal Facilities May Begin Until 30 Days After Issuance of the Permit and the EPA Regional Administrator Has Approved Start-Up

FLOW III-12
SAFE DRINKING WATER


Continue Action
NO
RSO*— Does Action Involve Injection of Substance into Ground?
YES
RSO Consults Appropriate EPA or State Regulations on UIC
RSO Contacts the Appropriate EPA or SD
EPA or SD and RSO Identify Class of Injection Well
EPA or SD and RSO Determine if UIC May be Authorized by Rule, Individual Permit, or Area Permit
By Rule
EPA or SD Authorize Permit by Rule
Individual Permit
EPA or SD Transmits Application for Permit to RSO
Area Permit
EPA or SD Transmits Applications for Area Permit to RSO
RSO Prepares and Submits UIC Permit Application to EPA or SD

- Refer to 40 CFR 122 and 124 Subpart A for General Program Requirements
- Refer to *Federal Register* April 20, 1979 (40 CFR 146) for Technical Criteria and Standards

- Conduct Informal Discussions About Projects and Need for UIC Permit

- CLASS I: Used to Inject Industrial, Nuclear, and Municipal Wastes Beneath Deepest Stratum Containing Underground Drinking Water Source
- CLASS II: Used 1) to Dispose Fluids Brought to Surface During Oil and Gas Production, 2) to Inject Fluids for Recovery of Gas/Oil, or 3) to Store Hydrocarbons
- CLASS III: Used 1) to Inject Fluids for Mineral Recovery 2) for *in situ* Gasification of Oil Shale and Coal, or 3) to Recover Geothermal Energy
- CLASS IV: Used to Inject Hazardous Wastes Into or Above Strata Containing Underground Drinking Water Sources
- CLASS V: All Wells Not Described Above

- Existing Class II Enhanced Recovery and Existing Hydrocarbon Storage Wells
- Existing Class IV Wells Until Abandoned or Closed
- Class V Wells Until Regulations Become Effective
- Owner of Existing Wells Waiting to Process Application for Individual Permit — EPA or SD Will Develop Schedule for Issuing Permit

- Conditions for Area Permit:
  - — Under Control of Single Individual
  - — Within Single Field, Project or Site Within a State
  - — Of Same Type and Construction
  - — Injection Into Same Aquifer or Zone

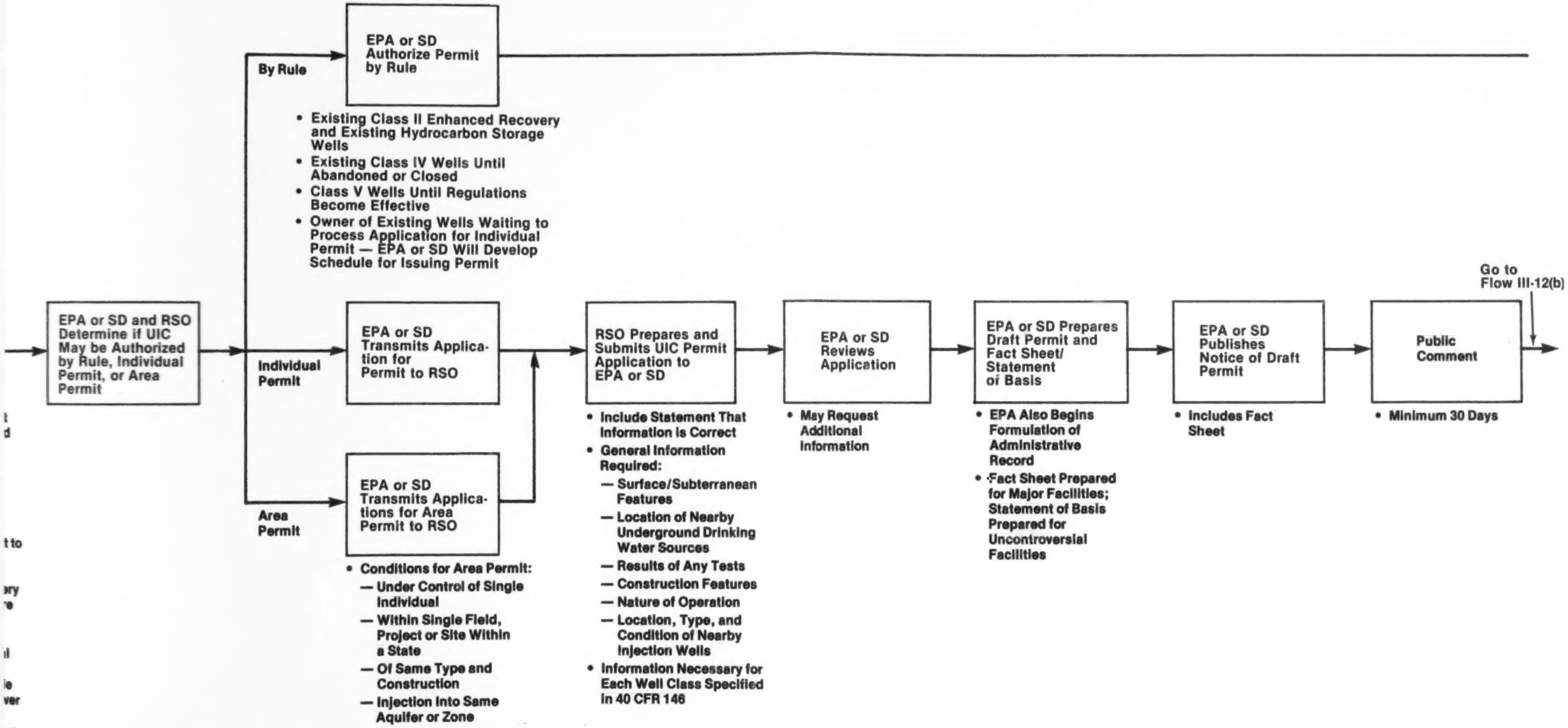
- Include Statement That Information Is Correct
- General Information Required:
  - — Surface/Subterranean Features
  - — Location of Nearby Underground Drinking Water Sources
  - — Results of Any Tests
  - — Construction Features
  - — Nature of Operation
  - — Location, Type, and Condition of Nearby Injection Wells
- Information Necessary for Each Well Class Specified in 40 CFR 146

- Ma
Ad
Inf

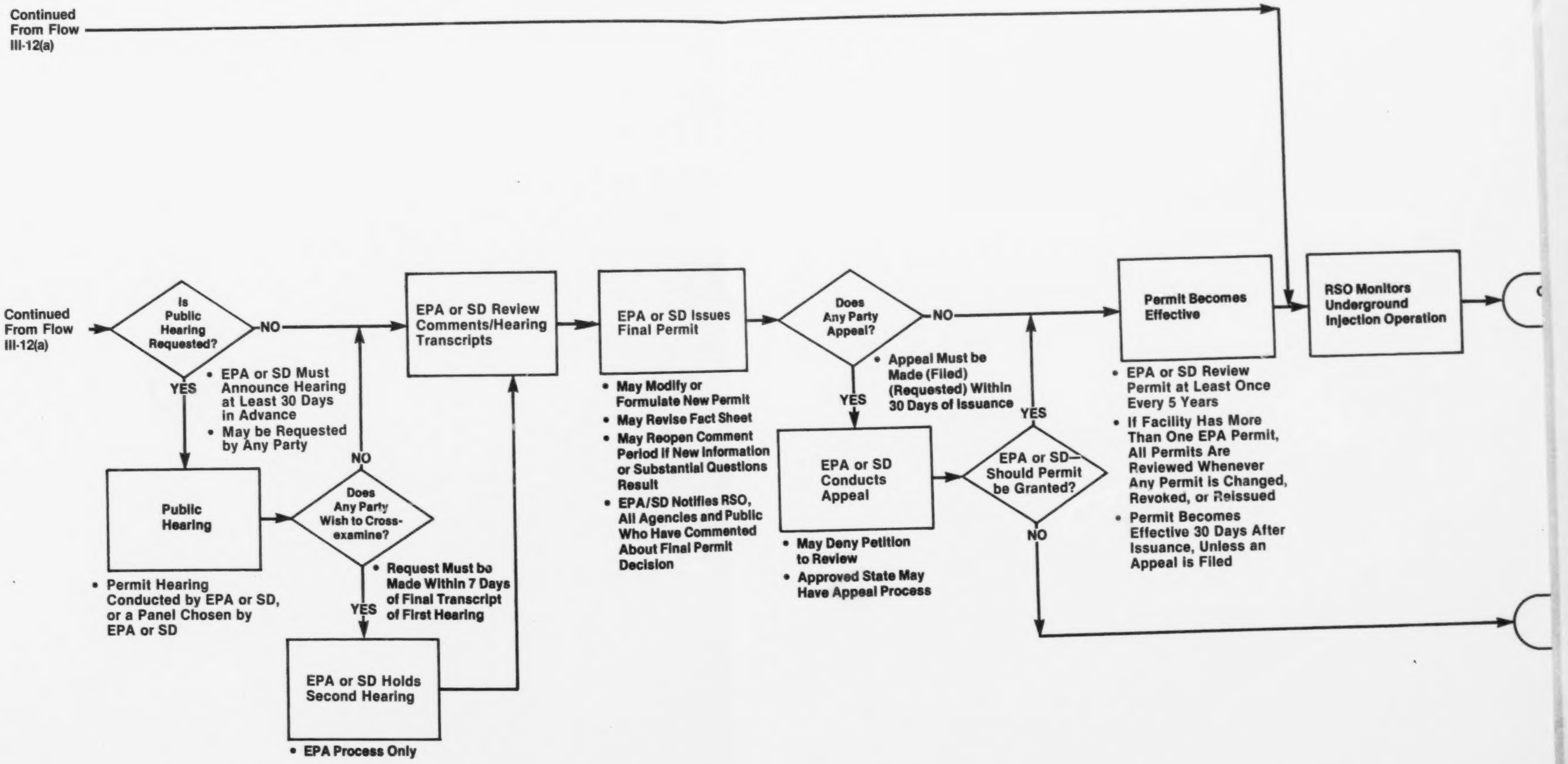
*After Consultation with ASEV

Legend:
EPA—Regional Administrator Environmental Protection Agency
UIC—Underground Injection Control
SD—State Director of Appropriate Water Quality Agency in a State with an Approved UIC Program
RSO—Responsible Supervisory Official
ASEV—Assistant Secretary for the Environment

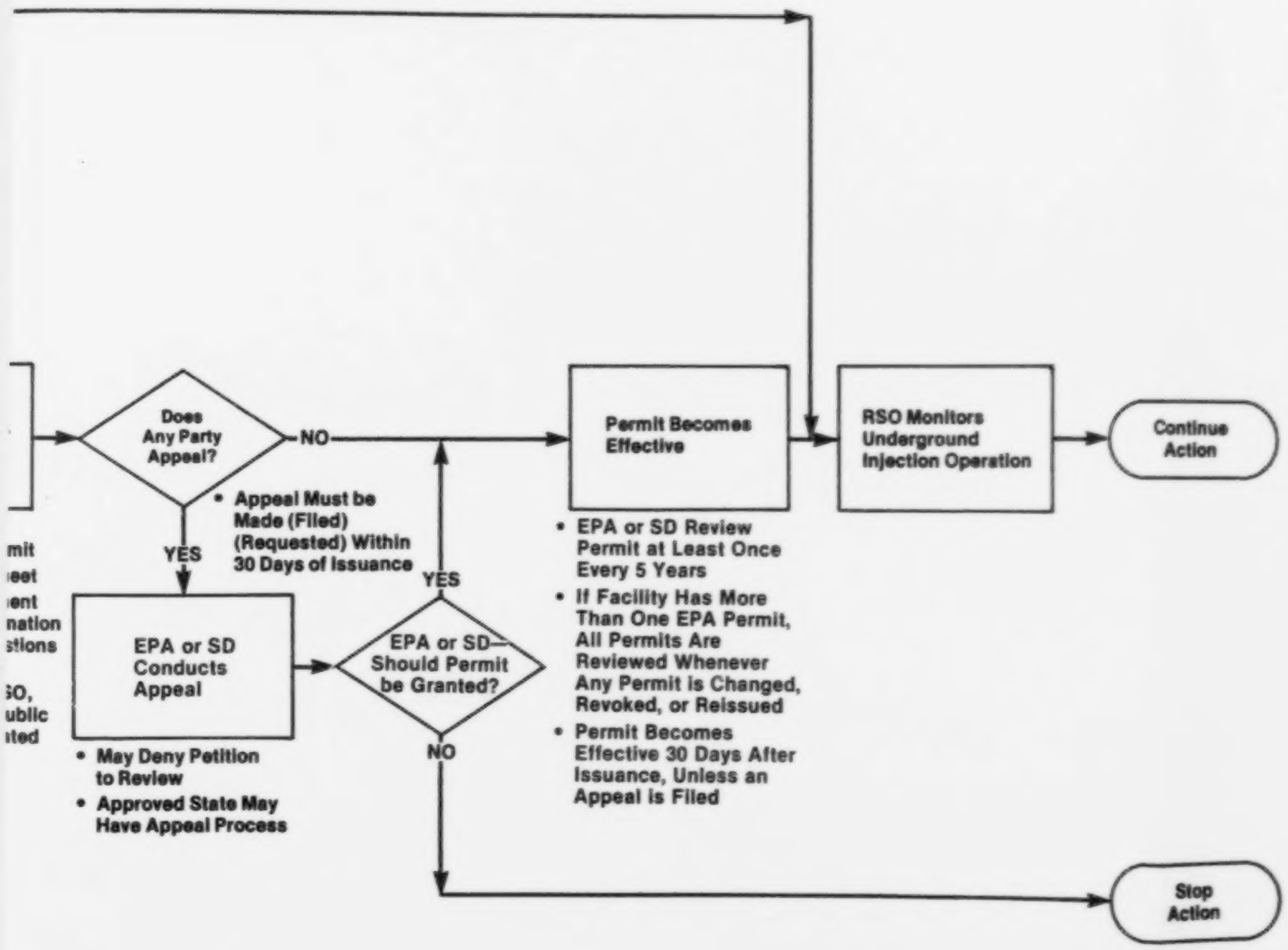
FLOW III-12(a)
SAFE DRINKING WATER ACT/ UNDERGROUND INJECTION CONTROL PERMIT PROCESS
45 CFR PART 146


EPA or SD and RSO Determine if UIC May be Authorized by Rule, Individual Permit, or Area Permit
By Rule
EPA or SD Authorize Permit by Rule
• Existing Class II Enhanced Recovery and Existing Hydrocarbon Storage Wells
• Existing Class IV Wells Until Abandoned or Closed
• Class V Wells Until Regulations Become Effective
• Owner of Existing Wells Waiting to Process Application for Individual Permit — EPA or SD Will Develop Schedule for Issuing Permit
Individual Permit
EPA or SD Transmits Application for Permit to RSO
Area Permit
EPA or SD Transmits Applications for Area Permit to RSO
• Conditions for Area Permit:
— Under Control of Single Individual
— Within Single Field, Project or Site Within a State
— Of Same Type and Construction
— Injection Into Same Aquifer or Zone
RSO Prepares and Submits UIC Permit Application to EPA or SD
• Include Statement That Information Is Correct
• General Information Required:
— Surface/Subterranean Features
— Location of Nearby Underground Drinking Water Sources
— Results of Any Tests
— Construction Features
— Nature of Operation
— Location, Type, and Condition of Nearby Injection Wells
• Information Necessary for Each Well Class Specified in 40 CFR 146
EPA or SD Reviews Application
• May Request Additional Information
EPA or SD Prepares Draft Permit and Fact Sheet/ Statement of Basis
• EPA Also Begins Formulation of Administrative Record
• Fact Sheet Prepared for Major Facilities; Statement of Basis Prepared for Uncontroversial Facilities
EPA or SD Publishes Notice of Draft Permit
• Includes Fact Sheet
Public Comment
• Minimum 30 Days
Go to Flow III-12(b)

*After Consultation with ASEV


Continued From Flow III-12(a)
Continued From Flow III-12(a)
Is Public Hearing Requested?
NO
YES
• EPA or SD Must Announce Hearing at Least 30 Days in Advance
• May be Requested by Any Party
Public Hearing
• Permit Hearing Conducted by EPA or SD, or a Panel Chosen by EPA or SD
Does Any Party Wish to Cross-examine?
NO
YES
• Request Must be Made Within 7 Days of Final Transcript of First Hearing
EPA or SD Holds Second Hearing
• EPA Process Only
EPA or SD Review Comments/Hearing Transcripts
EPA or SD Issues Final Permit
• May Modify or Formulate New Permit
• May Revise Fact Sheet
• May Reopen Comment Period if New Information or Substantial Questions Result
• EPA/SD Notifies RSO, All Agencies and Public Who Have Commented About Final Permit Decision
Does Any Party Appeal?
NO
YES
• Appeal Must be Made (Filed) (Requested) Within 30 Days of Issuance
EPA or SD Conducts Appeal
• May Deny Petition to Review
• Approved State May Have Appeal Process
EPA or SD— Should Permit be Granted?
YES
NO
Permit Becomes Effective
• EPA or SD Review Permit at Least Once Every 5 Years
• If Facility Has More Than One EPA Permit, All Permits Are Reviewed Whenever Any Permit is Changed, Revoked, or Reissued
• Permit Becomes Effective 30 Days After Issuance, Unless an Appeal is Filed
RSO Monitors Underground Injection Operation

FLOW III-12(b)
SAFE DRINKING WATER ACT/ UNDERGROUND INJECTION CONTROL PERMIT PROCESS
45 CFR PART 146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tions
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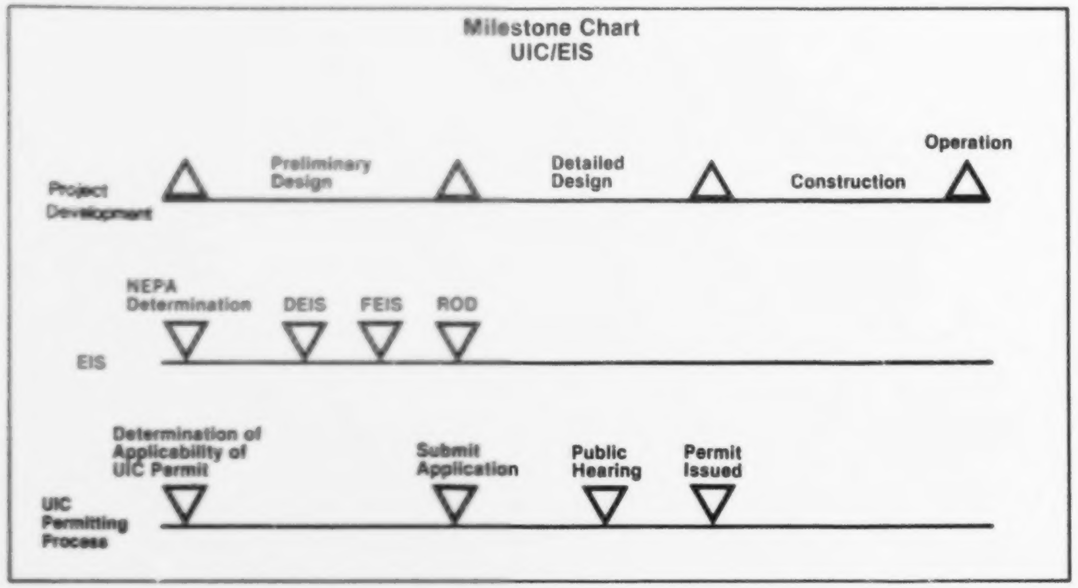
ublic
ated
Does Any Party Appeal?
NO
YES
EPA or SD Conducts Appeal
EPA or SD—Should Permit be Granted?
YES
NO
Permit Becomes Effective
RSO Monitors Underground Injection Operation
Continue Action
Stop Action

- Appeal Must be Made (Filed) (Requested) Within 30 Days of Issuance

- May Deny Petition to Review
- Approved State May Have Appeal Process

- EPA or SD Review Permit at Least Once Every 5 Years
- If Facility Has More Than One EPA Permit, All Permits Are Reviewed Whenever Any Permit is Changed, Revoked, or Reissued
- Permit Becomes Effective 30 Days After Issuance, Unless an Appeal is Filed


Milestone Chart
UIC/EIS
Project Development
Preliminary Design
Detailed Design
Construction
Operation
EIS
NEPA Determination
DEIS
FEIS
ROD
UIC Permitting Process
Determination of Applicability of UIC Permit
Submit Application
Public Hearing
Permit Issued

No Construction on the Facilities Related to the Underground Injection May be Initiated Until 30 Days After Issuance of the Permit

APPENDIX A.
NEPA DOCUMENT FORMAT AND CONTENT

SECTION A.1
ACTION DESCRIPTION MEMO

APPENDIX A.1 ACTION DESCRIPTION MEMORANDUM

Purpose

An action description memorandum serves as the basis for a determination of the required level of NEPA documentation and should be prepared for each proposed action not exempted by DOE Guidelines (45 FR 20694). It should be submitted to the Office of Environment (EV) as early as possible in the planning process of an action. This will help ensure proper planning for NEPA compliance and allow integration of the NEPA process with the development process for an action and thereby help avoid delays. The action description memorandum should contain sufficient information to permit a reasonable determination of the NEPA documentation required.

Outline

An action description memorandum should contain, as appropriate, the following information:

1.	Concise Description of Proposed Action	The proposed action should be briefly, but concisely, described. Included in this description is a statement as to the purpose and need for the proposed action; the type of action (program, policy, or project); the class of action (legislative or administrative); the type of energy technology; and an indication of the size of the action.
2.	Location of the action	The proposed location of the action, if site specific; should be identified clearly by naming the closest city or metropolitan area, and the county and state in which the action is to take place. Other characteristics such as rural or urban qualities, environmental setting (forested, desert, outer continental shelf, grasslands, etc.) and economic conditions of the area may be included.
3.	Potential Issues	Any known or potential issues or problems, particularly environmental issues, should be briefly presented. These may include such issues as presence of endangered species, possible conflict with historic areas, conflict with Indian lands or religious sites, involvement of floodplains or wetlands, known air quality problems, water quality problems, etc.

ENVIRONMENTAL ASSESSMENTS

A.2 ENVIRONMENTAL ASSESSMENT

Purpose

The Council on Environmental Quality (CEQ) regulations 40 CFR 1508.9 state that environmental assessment:

> "(a) Means a concise public document for which a Federal agency is responsible that serves to:
>
> (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
>
> (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.
>
> (3) Facilitate preparation of a statement when one is necessary.
>
> (b) Shall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted."

Format and Content

An environmental assessment (EA) shall, as appropriate, contain the following information: A clear and concise description of the proposed action, including drawings, maps, and charts, if directly pertinent to analyzing the environmental consequences of the proposed action; a description of the existing environment affected by the proposed action only in sufficient detail to permit a meaningful evaluation of the potential environmental consequences of the proposed action; an assessment of the probable impacts of the proposed action including direct and indirect effects and those adverse impacts which cannot be avoided should the proposal be implemented; an evaluation of the probable cumulative and long-term environmental effects including any beneficial impacts: an assessment of the risk of credible accidents; a discussion of the relationship of the proposed action to any applicable Federal, state, regional, or local land use plans and policies likely to be affected; and a brief description of reasonable alternatives to the proposed action and their probable environmental effects.

IMPACT

A.3 FINDING OF NO SIGNIFICANT IMPACT

Purpose and Content

The CEQ regulations 40 CFR 1508.13 state that: a Finding of No Significant Impact (FONSI) is a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (1508.4), will not have a significant effect on the human environment and for which an environmental impact statement will therefore not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

General Outline

a. Declaration of Finding (including reference to the EA and other applicable documents)

b. Description of the proposed action

c. Alternatives considered

d. Description of impacts and justification for conclusion of no significance

e. Availability of EA

f. Contact

Circulation and Dissemination

The Council on Environmental Quality (CEQ) regulations 40 CFR 1501.4(e) state:

> "(1) The agency shall make the finding of no significant impact available to the affected public as specified in Section 1506.6
>
> (2) In certain limited circumstances, which the agency may cover in its procedures under Section 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:
>
> (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Section 1507.3, or
>
> (ii) The nature of the proposed action is one without precedent."

Diligent effort shall be made to make the FONSI available to the public in the following manner consistent with the Council on Environmental Quality (CEQ) regulations 40 CFR 1506.6:

The FONSI will be:

a. Published in the Federal Register in the case of an action of national concern

b. Mailed to those who requested it on an individual action

c. Mailed to national organizations reasonably expected to be interested in the matter

Where the action is primarily of local concern, the Notice will also be:

a. Sent to state- and area-wide clearinghouses pursuant to Office of Management and Budget Circular A-95 (revised)

b. Published in local circulation newspapers

c. Sent to potentially interested community organizations

d. Distributed through other local media

e. Published in newsletters that may be expected to reach potentially interested persons

f. Mailed directly to owners and occupants of nearby or affected property

g. Posted on and offsite in the area where the action is to be located

h. Sent to Indian Tribes when effects may occur on reservations

i. Distributed in accordance with the affected States' public notice procedures for comparable actions

SAMPLE

FINDING OF NO SIGNIFICANT IMPACT
NORTHERN CALIFORNIA POWER AGENCY GEOTHERMAL POWER PLANT NO. 2, SONOMA COUNTY, CALIFORNIA

The Department of Energy, in cooperation with the California Energy Commission and the Department of the Interior's Bureau of Land Management and Geological Survey, has prepared a Joint Environmental Study on the construction of a 110 megawatt geothermal power-plant in the Geysers-Calistoga Known Geothermal Resource Area on federally administered lands in Somona County, California. Based on the findings of the Joint Environmental Study, which is available to the public on request, the Department of Energy has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. Therefore, no environmental impact statement is required.

The proposed facility is the first commercial geothermal power-plant that will be developed on public lands in the United States, and the first electric generation facility owned and operated by the Northern California Power Agency (NCPA). Construction is projected to begin in 1980 with the first phase, a 55 megawatt generating unit, scheduled for operation in late 1981. The second phase, another 55 megawatt generating unit, is scheduled for operation six months later in mid-1982.

A wide variety of alternatives to the proposed construction of the geothermal power-plant were considered, all assuming that there is a need to supply 110 megawatts of baseload generation capacity to the NCPA by late 1981. The alternatives were: (1) no project, (2) alternative location, (3) alternative facilities, (4) alternative size, (5) alternative designs, (6) alternative means of accomplishing project objective, (7) alternative steam gathering facilities, and (8) alternative uses of geothermal steam.

There are no significant environmental impacts associated with the construction of the proposed geothermal electric generating plant. Impacts to specific environmental concerns and mitigation measures that will be taken are as follows:

Air Quality -- Hydrogen sulfide (H_2S) emissions from the plant will be abated through the use of a surface condensor, a Stretford H_2S reduction system and a hydrogen peroxide process. The use of a hydrogen peroxide abatement system will serve as a secondary treatment system that can be utilized immediately if the surface condensor/Stretford system combination fails to provide the desired degree of H_2S reduction. The local air quality control authority has specified conditions (e.g., continuous H_2S monitoring device, abatement system reliability, reinjection of all untreated steam) which insure the project's compliance with applicable air quality regulation.

Water Quality -- There is potential for degradation of water quality due to erosion from construction activities, spills from the H_2S abatement process area, storm water run-off and handling of liquid and solid waste. The NCPA has agreed to erosion control measures, submitted an acceptable Spill Containment Plan and plans proper management and transport of toxic waste materials to an approved off-site waste disposal area.

Biological Resources

Wildlife -- The project will adversely affect a natural seep used as a source of water for wildlife in the arid environment surrounding the site. The NCPA will construct a wildlife drinking facility to replace the resource damaged by the project and will assure a year-round supply of water of approximately the quantity and quality as existed before construction of the power-plant. In addition, NCPA will plant and irrigate natural vegetation surrounding the drinking facility to provide cover.

Vegetation -- A plant listed on the state list of uncommon, threatened and endangered species (*Streptanithus morissonii*) has been found near the site of a proposed transmission tower. The NCPA will notify the Bureau of Land Management (BLM) at least one week before construction of the tower. A representative of BLM will be present to assure no intrusions onto areas identified as habitat for the species occurs.

Earth Resources

Seismicity -- The project area is in a seismically active zone. A number of active faults capable of producing strong ground shaking at the proposed site occur within a 50-mile radius. However, no active faults traverse the site. The geotechnical design aspects of the plant are in conformance with California standards and codes. A registered engineering geologist shall be present during all phases of site preparation and grading. Should any unforeseen adverse geologic conditions be identified at the site, construction may be halted to allow adequate mitigation and final design changes to be made.

Soils -- Construction activities will cause increased soil erosion. However, erosion control measures are incorporated as conditions of the United States Geologic Survey (USGS) license granted to NCPA. For example, clearing of vegetation must be minimized, and altered or created slopes must be contoured, graded and revegetated, where feasible, with native chaparral vegetation.

Cultural Resources -- A registered prehistoric archeological site is situated near the project. The USGS license stipulates that NCPA must establish a 200 foot buffer zone surrounding the site. If disturbance of the site is unavoidable, a professional archeologist must be retained before disturbance to direct impact mitigation alternatives.

Socioeconomic Resources -- Construction of the power-plant will require an average work force of 46 people. The employees will be drawn from the existing pool of experienced geothermal workers in the local area. Operation and maintenance of the power-plant would offer employment opportunities for relatively few workers and would have insignificant effect on local employment levels.

Noise -- The major noise impact may be expected during infrequent power-plant shutdowns requiring incoming steam to be vented (steam stacking). The USGS license to NCPA limits noise levels to below Federal standards. Steam stacking noise impacts will be ameliorated both through the existing topography (a ridge will deflect sound up and over a nearby community) and through the use of such mitigation measures as rock mufflers.

Aesthetics -- The project would increase the intrusion of manmade structures on mountainous terrain and open landscape. The impact of the visual change is lessened by the presence of other geothermal development in the vicinity and the designation of the area as a "primary geothermal resource area."

SINGLE COPIES OF THE JOINT ENVIRONMENTAL STUDY ARE AVAILABLE FROM:

John L. Geesman, Executive Director
California Energy Commission
1111 Howe Avenue
Sacramento, California 95825

FOR FURTHER INFORMATION CONTACT:

Michael Kleinrock
Regulations and Procedures Branch
NEPA Affairs Division
Room 4G-064
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 2526374

Date Issued

Ruth C. Clusen
Assistant Secretary
for Environment

PROCEDURES FOR [illegible]

A.4 PROCEDURES FOR SCOPING

Under development.

NOTICE OF INTENT/EIS

A.5 PUBLIC NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

As soon as practicable after the decision to prepare an environmental impact statement (EIS), and before the scoping process, a Notice of Intent shall be published in the Federal Register unless there is a lengthy period of time between the time of decision and preparation of the draft statement. Where such a delay may exist, the Notice of Intent may be published at a reasonable time in advance of preparation. Diligent effort shall be made to notify and involve the public in the following manner consistent with the Council on Environmental Quality (CEQ) Regulations 40 CFR 1506.6:

Recommended General Outline

a. Agency identification

b. Proposed action

c. Summary of action and purpose of notice (include address for submission of comments and/or contact for additional information)

d. Dates and location of any hearings

e. Background information

   1. Site description
   2. Proposed action including need
   3. Identification of significant environmental (and socioeconomic) issues
   4. Timing

f. Alternatives including the proposed action

g. Comments and hearings

   1. Invitations
   2. Procedures
   3. Dates, times, location
   4. Availability of related documents

Distribution

As a minimum, the Notice will be:

a. Published in the Federal Register

b. Mailed to those who requested it on an individual action

c. Mailed to national organizations reasonably expected to be interested in the matter

Where the action is primarily of local concern, the Notice will also be:

a. Sent to state- and area-wide clearinghouses pursuant to Office of Management and Budget Circular A-95 (revised)

b. Published in local circulation newspapers

c. Sent to potentially interested community organizations

d. Distributed through other local media

e. Published in newsletters that may be expected to reach potentially interested persons

f. Mailed directly to owners and occupants of nearby or affected property

g. Posted on and offsite in the area where the action is to be located

II. Disposition of Refunded Overcharges

In this Consent Order, Belridge agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of transactions specified in I.2, above, the sum of $65,616.13, plus interest, on or before June 30, 1980. $222.92, plus interest, will be refunded to a consumer of the NGLP's. Refunded overcharges of $65,393.21, plus interest, for NGLP's sold to purchasers other than consumers, will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute those refunded amounts paid to DOE in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to indentify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payments to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount to be paid to DOE should provide written notification of the claim to the ERA at this time. Proof of claim is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Lon W. Smith, District Manager of Enforcement, Western District Office, Department of Energy, 333 Market Street, 6th Floor, San Francisco, CA 94105. You may obtain a free copy of this Consent Order by writing to the same address or be calling (415) 764–7038.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Belridge Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on September 29, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in San Francisco, California on the 5th Day of August, 1980.

Lon W. Smith,

District Manager, Office of Enforcement, Western District Economic Regulatory Administration.

[FR Doc. 80-26422 Filed 8-27-80; 8:45 am]

BILLING CODE 6450-01-M

Lake Erie Interconnection; Notice of Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice is hereby given that the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) to assess the environmental implications of a proposed ERA action: to grant or deny a permit authorizing the Jersey Central Power & Light Company (JCP&L), a subsidiary of the General Public Utilities Corporation (GPU) to construct, operate and maintain facilities at the international border, between the United States and Canada, for the transmission of electric energy from Ontario Hydro (OH) to JCP&L.

SUMMARY: On June 25, 1980, Jersey Central Power & Light Company (JCP&L), a subsidiary of the General Public Utilities Corporation (GPU), filed an application with the Economic Regulatory Administration (ERA) to install and maintain electric power facilities at the border between the United States and Canada, for the transmission of electric energy from Ontario Hydro (OH) to JCP&L. Specifically, JCP&L seeks authority to construct, connect, operate and maintain the United States portion of high voltage direct current (DC) transmission circuits extending from the Nanticoke Generating Station in Ontario, Canada to the West Erie substation located near Erie, Pennsylvania. These circuits will employ submarine cable with a 1000 megawatt capability and will be located on the botton of Lake Erie. Overhead facilities will carry the lines from the lake shore to the Erie West substation where DC/AC conversion equipment will be located. The international border is the middle of Lake Erie and, as such, the U.S. portion will be from the Erie West Substation to the middle of Lake Erie. JCP&L is a member of the Pennsylvania, New Jersey, Maryland (PJM) Interconnection, and it is expected that arrangements will be made such that the transmission facilities operated by members of this power pool will be used for delivery of the power across Pennsylvania to the JCP&L service area in New Jersey. JCP&L further states in the application that the electric power imported will be partly utilized by the other subsidiary utilities of the GPU organization. These are the Pennsylvania Electric Company and the Metropolitan Edison Company.

Interested agencies, organizations, and the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so and/or to attend the public scoping meetings which will be held on September 23, 1980, in Erie, Pennsylvania, in order to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS. Parties who desire to present oral comments at one of the scoping meetings should provide advance notice to ERA as described below under Comments and Scoping Meeting. Upon completion of the draft EIS, its availability will be announced in the **Federal Register,** at which time comments will be solicited.

Written comments on this activity should be addressed to: Mr. James M. Brown, Jr., Chief, System Reliability & Emergency Response Branch, Economic Regulatory Administration, Room 4110-E, 2000 M Street NW., Washington, D.C. 20461.

For general information on the EIS process contact: NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant

Secretary for Environment, U.S. Department of Energy, ATTN: Ms. Linda Desell, Room 4G–059, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585,.(202) 252–4610.

DATE: Scoping meetings 1:00 p.m. and 7:00 p.m., September 23, 1980, in Erie, Pennsylvania in Room 101 of the Zurn Building at Gannon College, Perry Square, Erie, Pennsylvania.

Written comments due: October 31, 1980.

BACKGROUND INFORMATION: The primary purpose of JCP&L in proposing to establish this 1000 MW high voltage DC interconnection between Ontario and Pennsylvania is to enable JCP&L to purchase, and Ontario Hydro to sell, substantial amounts of electrical energy and capacity during the period from 1984 through 1991.

JCP&L states that it needs to purchase power during this period so as to have adequate capacity to supply the projected requirements of its customers. The ability of Ontario Hydro to supply the electric power through 1991 is primarily the result of an internal load growth at a lower rate than had been expected when recently completed generating plants were planned.

According to JCP&I. there appears to be little probability that it could purchase the required power from other U.S. utilities within the PJM interconnection. If this were available, the generation of the power would required additional operation of oil-fueled generating plants, increasing oil use by U.S. utilities. Since oil will be the fuel, JCP&L expects that the cost of power purchased from other PJM companies would be substantially greater than under the proposed arrangement with Ontario Hydro. Power deliveries from Ontario Hydro would be generated in either coal-fired or nuclear power plants.

The application also states that an additional long-term benefit could be expected from the proposed Lake Erie interconnection, since it would increase the ability of Ontario Hydro and the PJM utilities to transfer power either in response to emergency situations or to minimize generation costs. This facility may become an important asset to the regional power supply network in that no connection between PJM and a Canadian utility now exists and system performance is expected to be improved.

The proposed project will have associated cost and risk which will be weighed against potential benefits. JCP&L estimates the proposed facilities will cost about $285 million (1984 dollars). Environmental costs would also be incurred, and a major purpose of the EIS is to assess these for the proposed project and for alternatives to it. In addition, a number of electric power studies including load flows, stability analysis and production costs, will be made to assess this project's public interest value. The results of these studies will be included in the final Environmental Impact Statement.

The proposed project is subject to the jursidiction of ERA pursuant to Executive Order 10485 as amended because a Presidential Permit is specifically required for the construction, connection, operation and maintenance of electric transmission facilities at an international boundary of the United States. Authority to grant or deny such permits is vested in the Secretary of Energy and has been delegated by the Secretary to the Administrator of ERA. JCP&L applied for a permit in connection with the project on June 25, 1980, which was accepted by ERA subject to the supplemental filing of certain materials. Notice of the application was published in the **Federal Register** on July 21, 1980, (45 FR 48690). One of the actions required of JCP&L, prior to an ERA decision, is the preparation of an applicant's Environmental Report.

Preliminary Definition of Environmental Issues: The purpose of this notice is to solicit comments and suggestions for consideration in preparing the EIS. Any written comments or oral remarks made at the scoping meetings will be considered in the EIS process. The following list of environmental issues has been tentatively identified for analysis and assessment in the EIS. This list is not all-inclusive nor does it imply any predetermination of impacts. Additional issues for analysis may be identified as the result of public comment.

A. Environmental Issues That May Be Associated With Installation of the Proposed Submarine Cables

(1) temporary disruption and stress of aquatic and bottom dwelling flora and fauna during the laying of the cable;

(2) if the cable is laid in a trench, stress and mortality of aquatic populations during blasting or dredging operations, and if there is permanent change in bottom habitat in and near the trench;

(3) if dredging is required, habitat changes and other environmental effects at the site for disposal of dredged material;

(4) temporary disruption of littoral populations during construction and permanent changes in habitat due to rip-rap or other provisions for mechanical protection of the cables at the shoreline; and

(5) temporary socio-economic perturbations due to the influx of marine construction equipment and workers.

B. Environmental Issues That May Be Associated With the Construction of On-Shore Facilities and Aerial Transmission Lines, including

(1) temporary disruption of wildlife communities, agricultural production and other land uses along the line route during actual construction;

(2) permanent removal of tall growing vegetative species from the right-of-way, and of all vegetation from tower footings, access roads and substation sites;

(3) some socio-economic perturbations due to the influx of construction workers and equipment;

(4) temporary noise and air pollution resulting from operation of construction equipment and from burning of right-of-way slash;

(5) permanent visual impacts; and

(6) subterranean impacts related to installing structure footings.

C. Environmental Issues That May Be Associated With Operation and Maintenance of the Proposed Interconnection

(1) possible environmental effects associated with cable failure and the environmental effects of repair activities;

(2) periodic interference with plant and wildlife communities along the right-of-way, due to the required maintenance activities, particularly vegetation control;

(3) generation of acoustic noise and electromagnetic intereference to radio and television reception along the right-of-way;

(4) possible biological effects on human health or effects, such as reduced growth or viability for plant and animal species resident within or in proximity to the right-of-way.

(5) possibly long-term effects due to the use of herbicides for vegetation control; and

(6) indirect ecological and socio-economic effects resulting from easier unauthorized human access to some areas via access roads and right/of-way, such as increased hunting or use by motorcycles or snowmobiles.

(7) possible effect on water surrounding the energized cable.

D. Other Environmental Issues That May Be Associated With the Project

(1) the possibility of affecting threatened or endangered species or critical habitats for such species;

(2) identification and review of alternatives to construction within a 100-year floodplain or identified wetland and identification and review of mitigating measures to be taken if it is found that there are no practicable alternatives to construction in a floodplain or wetland;

(3) possible direct and adverse effects on the values for which a wild, scenic or recreational river was established;

(4) environmental factors relevant to any proposed construction in or over navigable rivers, or to any proposed actions resulting in the discharge of dredge or fill materials into any waters of the U.S.;

(5) actions having an impact on the continued use and viability of prime and unique farmlands;

(6) possible effects on sites or properties included on, nominated for, or eligible for inclusion in the National Register of Historic Places, or historical, architectural or archeological sites of national significance.

Preliminary Definition of Alternatives: Significant consideration will be given to alternatives to the proposed action, and the assessment of the environmental impacts to be expected from each alternative. The broad classes of alternatives which have been tentatively identified are described briefly below. Two alternative Federal actions are possible: (a) to grant a permit on the basis of JCP&L's complete application (including supporting materials such as the Environmental Report which will not be completed until late 1980), or (b) to deny the permit. However, substantive environmental consequences of each of the possible Federal decisions wouild result from the subsequent course of action followed by JCP&L (and other GPU subsidiaries) in response to the decision. Therefore, only those reasonable alternatives available to JCP&L will be considered in the EIS.

Major Types of Project Alternatives: Three alternatives tentatively have been identified:

(1) JCP&L and the other GPU subsidiaries could actively promote conservation and the use of alternative decentralized energy sources, such as solar heating and cogeneration, within their service areas and thereby reduce the need for power purchases;

(2) JCP&L and the other GPU subsidiaries could obtain purchased power equal to the Canadian import from a United States utility or utilities; and

(3) JCP&L and the other GPU subsidiaries couild construct a generating station with a net capability of 1000 MW.

Impact Mitigation Alternatives: The environmental impacts which would result from construction and operation of the proposed project would depend on the choice among a number of alternative possibilities as to where and how the project was constructed, as well as the choice of alternative maintenance and repair procedures during operation. Tentatively, identified groups of alternatives for consideration in the EIS include (a) design, (b) route selection, (c) construction practices and (seasonal) timing, and for the on-shore portion, (d) right-of-way clearing procedures, and (e) right-of-way maintenance practices.

Comments and Scoping Meeting. The scoping meetings will be conducted informally with the presiding officer affording all interested individuals in attendance an opportunity to speak. A transcript of the meetings will be made. The Economic Regulatory Administration has designated Mr. James M. Brown, Jr., as presiding officer at these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Speakers will be alloted approximately fifteen minutes for their oral statements. Should any speaker desire to have additional time or to provide further information for the record, such additional information should be submitted in writing by October 31, 1980. Written comments will be considered and given equal weight with oral comments.

A transcript of the scoping meetings will be retained by DOE and made available for inspection at the Freedom of Information Library, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Firday. In addition, anyone may make arrangements with the reporter to purchase a copy of the transcripts.

Draft EIS Schedule and Availability. The draft EIS (DEIS) is expected to be completed by October 1, 1981, at which time its availability will be announced in the **Federal Register** and public comments will again be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the DEIS for review and comments when it is issued should notify James M. Brown, Jr., at the address given in the Summary section above. Those seeking further information may inquire of either Mr. Brown or Ms. Linda Desell.

Copies of the applicants' Environmental Report and other documents to be used in preparation of the DEIS will be made available for public inspection at the applicant's general headquarters; at the local Erie Office of the Pennsylvania Electric Company; at the Erie County Library System, 3 South Perry Square, Erie, Pennsylvania, and at a number of DOE locations throughout the U.S. A notice of locations for such availability will be published in the **Federal Register** during January, 1981, when the permit application is expected to be completed.

Dated: August 25, 1980.

John C. Whitnah,

Acting Assistant Secretary for Environment.

[FR Doc. 80-26469 Filed 8-27-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Study of Impacts on Electric Power Systems Due to Volcanic Activity in Pacific Northwest

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of study by the Economic Regulatory Administration (ERA) of the impacts on electric power systems in the Pacific Northwest due to the recent eruptions of Mount St. Helens.

SUMMARY: ERA plans to study the impacts of recent volcanic activity on electric power systems in the Pacific Northwest.

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3825.

Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E-06, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: In recent months, ash and other emissions from Mount St. Helens have affected the continuity of the power supply in the States of Oregon and Washington. ERA proposes to study the impacts of the recent volcanic activity on electric power systems in that area. The overall objective of the study will be to ascertain the degree of impact on electric service reliability, the mitigative measures employed, and possible changes which might be made in the methods used. The study also will determine the outages and other effects on system reliability resulting from the eruptions of Mount St. Helens and will evaluate the immediate short-term

A.6 ENVIRONMENTAL IMPACT STATEMENT (EIS) IMPLEMENTATION PLAN

Purpose

The purposes of an EIS implementation plan are to record the results of the scoping process and to provide guidance to the Department of Energy (DOE) for the preparation of an EIS.

Recommended General Outline

The EIS implementation plan will be a brief document and will contain information to address the provisions of the Council on Environmental Quality (CEQ) Regulations 40 CFR 1501.7.

a. Action identification

b. Brief description of scoping process for action

   1. Public meetings
   2. Consultation/coordination meetings, etc.

c. Significant issues identified for detailed study

d. Issues identified as not significant for detailed study

e. Identification of other EAs or EISs (including public) that are related to but not a part of the EIS under consideration

f. Identification of non-NEPA environmental analysis, review and consultation requirements. Integrate requirements with EIS schedule

g. Timing relationships between NEPA compliance process (analysis, documentation, etc.) and project planning and decision making schedule

h. Detailed outline of EIS

i. Description of how the EIS will be prepared including contractor assistance

j. Page limit targets

k. Target dates for EIS preparation

l. Allocation of assignments between DOE and cooperating agencies

DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later.

Sample Implementation Plan developed for a project pursuant to the Powerplant and Industrial Fuel Use Act of 1978

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1.0 INTRODUCTION

On May 16, 1980, the United States Department of Energy (DOE), Economic Regulatory Administration (ERA) issued a proposed Prohibition Order pursuant to the authority granted by Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), P.L. 95-620, to the Public Service Electric & Gas Company (PSE&G) for Unit 7 (Boiler) of the Burlington Generating Station. A final Prohibition Order issued by ERA would prohibit the combustion of petroleum or natural gas as the primary fuel source in Unit 7. Because DOE has determined that the issuance of this Prohibition Order would be a major Federal action, DOE has issued a Notice of Intent (DOE, 1980b) to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA) of 1969.

This report is an EIS Implementation Plan. It is required by DOE to record the public scoping process, to describe the means of EIS preparation (including use of contractor assistance), to identify the significant environmental issues, and to provide overall guidance in the preparation of the required EIS. This guidance includes discussion of the scope, length, content (as identified in a detailed outline), environmental review and consultation requirements, and timing of the EIS.

An environmental impact analysis will be prepared by Battelle's Columbus Laboratories, under subcontract to DOE's Pacific Northwest Laboratory. The resulting Environmental Impact Report (EIR) will not exceed 150 pages and will address the anticipated site-specific environmental impacts of the proposed action and the reasonable alternatives. DOE/ERA will use the EIR to prepare a Draft Environmental Impact Statement (DEIS) which, after public comments are received and addressed, will be issued as a Final EIS.

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2.0 EIS PREPARATION AND THE IMPLEMENTATION PLAN

2.1 Purpose and Content of EIS Implementation Plan

The purpose of this EIS Implementation Plan is twofold. It describes and documents the scoping process* conducted for the EIS on the proposed Prohibition Order for the Burlington Generating Station and also provides the necessary guidance for the development of the EIS. The content of this Implementation Plan addresses the specific requirements and options of the DOE guidelines (DOE, 1980a), as follows:

- Information to address the provisions of 40 CFR 1501.7 (a) (2), (3), (5), (6), and (7), including the content and significant issues to be addressed; insignificant issues; any public environmental assessments and other related EIS's; environmental review and consultation requirements; and the timing of environmental analyses (CEQ, 1978).
- A detailed outline of the EIS
- A description of the means by which the EIR will be prepared, including the nature of any contractor assistance to be used.
- Target page limits for the EIR
- Target time limits for EIS preparation
- An allocation of assignments among DOE and cooperating agencies.

2.2 Description of EIS Preparation

Issuance of a final Prohibition Order for Unit 7 will be a major federal action requiring preparation of an EIS (DOE, 1980b). Preparation of

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* The Council on Environmental Quality (CEQ) regulations (CEQ, 1978) and the DOE guidelines (DOE, 1980a), which implement the provisions of NEPA, require that the public be afforded an opportunity to participate in the process of EIS development. This opportunity is called the public scoping process and allows for participation in the identification of significant issues and in the determination of the scope and range of issues to be addressed in the EIS.

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the EIS includes the scoping of issues, collection of data, analysis and documentation, and publication of a DEIS. These environmental compliance activities are conducted in parallel with the Prohibition Order process in order to expedite final fuel conversion, if demonstrated to be feasible.

An environmental impact analysis conducted with contractor assistance will produce an Environmental Impact Report (EIR) that addresses the anticipated impacts to the human environment if Burlington Unit 7 were fired on alternate fuels. The EIR will be the basis for the Draft Environmental Impact Statement (DEIS) issued by DOE/ERA. The DEIS will meet the requirements of Section 102 of the National Environmental Policy Act (NEPA), as set forth in the CEQ Regulations (CEQ, 1978), for implementing procedural provisions of NEPA.

The EIR will contain discussions of: (1) the need for the proposed action; (2) the alternatives to the proposal; (3) the affected environment; (4) the environmental impacts of the proposed action and reasonable alternatives; and (5) references.

The EIR will consider the possible environmental impacts resulting from the conversion and operation of Burlington Unit 7 as they relate to the issue areas identified in the scoping process (see Section 5.3) and presented in the Implementation Plan. The EIR will be supplemented by ERA with additional information, such as cost and need for power, and then will be published by DOE as a draft EIS.

3.0 BACKGROUND INFORMATION

3.1 The Burlington Generating Station

The Burlington Generating Station of the Public Service Electric and Gas Company (PSE&G) lies on the west city limit of Burlington, New Jersey, about 15 miles (24 km) north of Camden. The station is on the east shore of the Delaware River, which is navigable and will permit the receipt of coal by barge. The middle of the river is the Pennsylvania state line.

A number of potentially significant factors relate to the location of the Burlington Generating Station. The area is within a Class II Prevention

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of Significant Deterioration air quality region, but outside the jurisdiction of the Coastal Area Facility Review Act. The immediately surrounding land is either occupied by or dedicated for industrial facilities. Adjoining facilities include industrial plants, a city water tower, a proposed industrial park (cleared land), and a liquefied natural gas storage facility. There are a number of restored historical structures within the Burlington area, not far from the Station.

The Burlington Generating Station consists of a variety of electrical generating and transmission equipment. Presently, in the main building of the station only Unit 7 generates electricity, and it operates as a residual fuel oil-fired cycling unit. Other electrical generating facilities on site are gas turbine peaking units. Built in 1955 for coal firing and converted to oil in 1967, Unit 7 is expected to remain in service until 1995.

Much of the equipment for operating Burlington Unit 7 as a coal-fired facility has not been used in 6 to 13 years and will require significant repair or replacement. Environmental conditions and regulations have changed and may require equipment or methods of operation different from those acceptable in the past. Thus, a number of modifications in the equipment and operations may either be necessary or advisable if Unit 7 is converted from oil to coal.

In addition, a number of modifications are under consideration by PSE&G which would either aid in meeting environmental regulations or may be necessary to accommodate some of the above changes in equipment, following engineering and environmental analyses.

1.2 The FUA Prohibition Order Process

The FUA prohibits the combustion of natural gas and petroleum in new electric power plants, requires that natural gas not be fired in existing power plants after 1990, and gives ERA authority to prohibit the continued firing of oil and natural gas in existing power plants meeting certain criteria, thus encouraging the use of indigenous coal or other fuel resources. The Act includes provisions for temporary (up to five years) or permanent exemptions from these prohibitions if fuels other than natural gas and petroleum are not available; if physical, environmental, or legal factors preclude compliance; or if reliability of operation would be impaired by compliance.

4.0 ADMINISTRATIVE PROCEDURES AND REQUIREMENTS

4.1 ERA Decision-Making

ERA's administrative procedures for issuance of a Prohibition Order are initiated by publication of the proposed Order in the Federal Register. A three-month period is then allowed for comment, including the identification of any exemptions for which the recipient of the Order may qualify. Once the comment period is closed, and if the order is to proceed, ERA issues a notice to that effect. An additional three months is allowed for the recipient to demonstrate eligibility for an exemption. If ERA determines that a final Prohibition Order is to be issued, it must prepare and provide notice of availability of a tentative staff decision that is based on regulatory findings as to the technical and financial feasibility of conversion.

Interested persons may request a hearing on the decision within 45 days after issuance of the notice of availability. ERA then prepares a record of relevant evidence from the public comment period and the hearing, and with the use of this record determines whether to issue a final Prohibition Order. If issued, the final Order will contain a schedule for conversion to the selected fuel alternate. A copy of the final Order and the basis for its issuance are published in the Federal Register; the Order becomes effective 60 days after issuance.

Activities that are required to ensure compliance with NEPA are initiated at the same time the proposed Prohibition Order is published. These activities proceed concurrently with the required administrative procedures and entail the scoping of issues, collection of data, analysis and documentation, and publication of a DEIS. Input is solicited from those agencies with permit authority or jurisdictional authority for the first three activities. Once issued, the DEIS is subject to a public comment period and public hearings.

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In addition to completion of the final EIS, which incorporates the commentary from the comment period and public hearings, ERA must demonstrate the following findings before the final Prohibition Order can be issued: (1) that the generating unit in question has or could acquire technical capability to burn coal or use another alternate fuel without substantial physical modification or significant reduction in its rated capacity, and (2) that it is financially feasible for the unit to burn coal or other alternate fuels as a primary energy source.

The required technical analysis to support these findings proceeds with administrative and compliance activities to support the proposed conversion. This analysis would include evaluations on technical capability, financial feasibility of using an alternate fuel, environmental constraints, site limitations, state and local requirements, and fuel supply availability.

4.2 Utilization of Related Environmental Impact Statements

CEQ regulations provide for a concept called tiering. This is the use or referencing of material from related, broad-based environmental impact statements in the development of statements with a more defined or site-specific nature. The following environmental impact statements that address impacts of fuel conversion, and related issues on a national or regional basis, will be used by reference or incorporation in development of the EIS for the proposed Prohibition Order for the Burlington Generating Station.

1. Final Environmental Impact Statement, Fuel Use Act, (DOE, 1979).
2. Northeast Regional Technical Analysis and Environmental Impact Statement (Covering Power Plant Conversions under the Fuel Use Act), (DOE, in preparation).

The scope of the Northeast Regional EIS includes discussions on the impacts on air quality, waste disposal, fuel availability and transportation, and waste transportation related to the proposed prohibition against the burning of oil and gas. The statement also will include analyses of the health aspects of coal conversion.

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5.0 SCOPE OF EIS

Before an EIS is prepared, Federal regulations (CEQ, 1978) require the determination of the relative emphasis or significance to be placed on various environmental issues. This chapter describes the process which identified significant issues and the extent of their treatment in the EIS for converting Burlington Unit 7. The process involved an analysis of the potential alternative actions and, based on that analysis, the assessment of the significance of various environmental issues in terms of the context and intensity of potential environmental impact.

5.1 Review of Scoping Process Procedures and Record of Public Scoping Meeting

On March 28, 1980, final guidelines (DOE, 1980a) for implementing the procedural provisions of NEPA (CEQ, 1978) were promulgated by DOE. The final guidelines encourage public involvement in the determination of the scope of issues to be addressed, as well as the identification of significant issues related to the proposed action. To implement this requirement, DOE is required to:

- Publish in the *Federal Register* a Notice of Intent (NOI) to prepare an EIS
- Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6
- Through the NOI, invite comments and suggestions on the proposed scope of the EIS, including environmental issues and alternatives, and invite public participation in the NEPA process
- If a public meeting is held, provide notice of the meeting in the NOI at least 15 days before the meeting
- Prepare and use an EIS Implementation Plan to record the results of the scoping process and to provide guidance to DOE for the preparation of an EIS.

As part of the EIS development process, a public scoping meeting was held in the Council Chamber, Burlington City Hall, 432 High Street, Burlington

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City, on July 7, 1980. The required Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meeting was placed by DOE in the Federal Register on June 10, 1980 (DOE, 1980b).

The principal purpose of the Public Scoping Meeting was to solicit the public's views and recommendations on the structure and content of the EIS, on the major issues that should be addressed, on ways in which these issues might be addressed, and on reasonable alternative actions that should be considered in the preparation of the EIS. In addition to the public announcement of the Meeting, a number of organizations and individuals were invited to attend or submit written comments (Chase, 1980). The comments by attendees at the Meeting (DOE, 1980c) and written comments to the record (Coleman, 1980; Ashmun, 1980; Yarus, 1980; Hambright, 1980; Patrik, 1980) were analyzed to identify issues of concern. Many of the statements made in the letters were of a general nature, such as requesting copies of the DEIS and acknowledging the Public Scoping Meeting. A summary of concerns expressed by speakers at the Public Scoping Meeting and those extracted from written statements of interested parties is presented in Table 1.

5.2 Alternatives

According to the Federal regulations for the preparation of an EIS, the selection of alternatives to the action and their evaluation is a critical step in the EIS process; in the words of CEQ, "This section is the heart of the environmental impact statement" (CEQ, 1978, p. 55996). The selection of alternatives begins with the possible actions of the Federal government appropriate to the case at hand. The EIS will address all reasonable alternatives, including the no action alternative, and will assess the potential impacts from significant issues related to the issuance of a prohibition order. The assessment will cover the use of selected alternate fuels and a full range of pollution control strategies. For the Burlington Generating Station, the only possible Federal actions are issuance of the Prohibition Order (the proposed action) or nonissuance of the Order (no action).

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TABLE 1. SUMMARY OF CONCERNS EXPRESSED IN THE PUBLIC SCOPING PROCESS

	RESPONDENT					
	Scoping Meeting		Written Statements to Meeting Record			
Issue of Expressed Concern	R. Dyba(a)	E. [illegible](a)	J. Coleman(b)	C. Ashmun(c)	D. Yarus(d)	J. Hambright(e)
Air quality deterioration	X	X	X	X		X
Water contamination	X	X			X	
Ash and sludge disposal	X	X				
Compliance with air and water standards	X	X				
Increase in acid rain	X	X	X	X		
Impact on pinelands	X		X	X		
Impact on aesthetics	X					
Increased noise from coal transport and handling	X	X				
Degradation of wildlife areas	X					
Administrative coordination (ERA and Regional EIS)		X				X
Availability of coal		X				
Adequacy of coal transport facilities						
Alternative energy sources		X				
Implementation of control technology		X				
Economic considerations		X				

(a) Public Scoping Meeting transcript (DOE, 1980c).
(b) Coleman (1980).
(c) Ashmun (1980).
(d) Yarus (1980).
(e) Hambright (1980).

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If a Prohibition Order is issued, PSE&G has a number of options or actions which it may take. First, there are a number of alternate fuels PSE&G may use; for some of these, additional steps would be necessary to remain in compliance with environmental regulations and standards. Second, PSE&G may apply for one of a number of possible exemptions to the Order. Third, PSE&G may choose to shut down the unit. Each of these actions will constitute an option for PSE&G under a Prohibition Order. The current situation at Burlington Unit 7, e.g., use of Number 6 residual fuel oil (0.5 percent sulfur), represents the no action alternative and is the base case for comparative purposes in the analysis of alternatives and assessment of impacts. The use of natural gas also will be considered to represent the minimum emissions case. All available options developed by logical analysis are presented and summarized in Table 2. A more complete description and discussion of these options is available from DOE/ERA.

5.3 Issues

The Federal regulations that govern preparation of environmental impact statements require that a number of factors be considered in determining the significance to be placed upon various environmental issues in the EIS. Table 3 presents the significance (depth of coverage) of issues as determined for the Burlington EIS through an evaluation of the following factors.

The first factor is the concern expressed in the public scoping process (see Section 5.1). The second column in Table 3 shows the level of concern expressed in the public scoping process, where an issue was addressed, taken from an analysis of comments and letters in the Public Scoping Meeting record.

The second factor is concern (Table 3, third column) based on analyses of available information and derived from professional judgment, regarding the context and intensity of impacts that may result from the various alternatives. "Context" means that impacts must be considered in a variety of areas (such as the society, the region, the locality, the affected interests) within the setting of the proposed action. "Intensity" refers to severity of potential impacts, taking into account both beneficial and adverse

TABLE 2. ALTERNATIVES AND OPTIONS FOR THE BURLINGTON GENERATING STATION UNDER FUA

Alternative	Option Class	Option
Issue Prohibition Order (Proposed Action)	Alternate fuels	Compliance Coal Coal with precleaning Coal with flue-gas desulfurization Coal/oil mixture Miscellaneous other fuels: - Coal/gas mixture - Refuse-derived fuel - Petroleum coke - Wood - Others
	Shutdown Unit 7	Shift load to other plants Other energy approaches: - Conservation (demand reduction) - Solar - Wind - Geothermal - Nuclear
	Temporary Exemption	Peak load use only Retire Unit 7 before end of exemption period Delayed compliance
	Permanent Exemption	Special public interest gas rule Exemption on economic, physical, environmental, or legal grounds
Do Not Issue Order (No Action)	Continue as present	Burn No. 6 residual fuel oil (0.5% sulfur)
	Voluntary conversion	See alternate fuels options listed above

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TABLE 3. DETERMINATION OF THE SIGNIFICANCE OF ISSUES IN THE EIR/EIS

[Key to Broader EIS: F-Fuel Use Act Environmental Impact Statement (April, 1979). N-Northwest Regional Fuel Conversion Environmental Impact Statement, in preparation.]

Issue	Concerned Expressed in Public Scoping	Concern Due to Context and Intensity of Potential Impacts	Coverage in Broader EISs	Level of Effort and Coverage in the EIR/EIS
Air Quality				
Regulatory Compliance	Moderate	Moderate	F,N	Significant
Sulfur Dioxide(a)	Moderate	Moderate	F,N	Significant
Particulates	Low	Moderate	F,N	Significant
Nitrogen Oxides	Low	Moderate	F,N	Significant
Carbon Oxides	Low	Low	F,N	Nonsignificant
Ozone/Hydrocarbons	Moderate	Low	F,N	Nonsignificant
Fugitive Emissions	Low	Moderate	F,N	Significant
Visibility Degradation	Low	Moderate	F	Significant
Brigantine Refuge	Low	Low	N	Nonsignificant
Acid Rain(a)	High	Moderate	F,N	Nonsignificant
Control Technology	Low	Not Applicable	F,N	Nonsignificant
Heavy Metals	--	Moderate	--	Significant
Solid Waste				
Dredge Spoil	--	Low	--	Nonsignificant
Ash and Sludge	Moderate	Moderate	F,N	Significant
Transport	Low	High	F,N	Significant
Regulatory Compliance	Low	Moderate	F,N	Nonsignificant
Water Quality				
Regulatory Compliance	Low	Moderate	F,N	Nonsignificant
Surface water Consumption	Low	Moderate	F,N	Nonsignificant
Dredging and Spoil Disposal	--	Low	--	Nonsignificant
Waste Water Treatment	Low	Moderate	F,N	Nonsignificant

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TABLE 3. (Continued)

Issue	Concern Expressed in Public Scoping	Concern Due to Context and Intensity of Potential Impacts	Coverage in Broader EISs	Level of Effort and Coverage in the EIR/EIS
Water Quality (Continued)				
Construction Runoff/Erosion	Low	Moderate	--	Nonsignificant
Site Flooding	--	Low	--	Nonsignificant
Groundwater Consumption	--	Low	--	Nonsignificant
Coal Pile Leachate	Moderate	Moderate	F,N	Significant
Dredge Spoil Leachate	--	Moderate	F,N	Nonsignificant
Solid Waste Leachate	Moderate	Moderate	--	Significant
Land Use				
Land Use Planning	--	Low	F	Nonsignificant
Off-Site Requirements	--	Low	F,N	Nonsignificant
On-Site Requirements	--	Low	F,N	Nonsignificant
Change in Land Use	--	Low	F,N	Nonsignificant
Indirect Effects	--	Low	F,N	Nonsignificant
Socioeconomics				
Economic Effects	--	Low	F,N	Nonsignificant
Social Effects	--	Low	F,N	Nonsignificant
Historical/Archaeological				
Identified Sites	--	Low	F,N	Nonsignificant
Indirect Effects	--	Moderate	F,N	Nonsignificant

TABLE 3. (Continued)

Issue	Concern Expressed in Public Scoping	Concern Due to Context and Intensity of Potential Impacts	Coverage in Broader EISs	Level of Effort and Coverage in the EIR/EIS
Human Health				
Air Quality	Low	High	F,N	Significant
Water Quality	--	Moderate	F,N	Nonsignificant
Noise				
Coal Transport	Low	Moderate	F,N	Nonsignificant
Coal Handling	Low	High	--	Significant
Other Operations	--	Moderate	--	Nonsignificant
Waste Trucking	--	Moderate	--	Nonsignificant
Construction	--	Moderate	--	Nonsignfiicant
Ecology-Aquatic				
Dredging	--	Low	--	Nonsignificant
Cooling Water	--	Moderate	F,N	Nonsignificant
Waste Water	--	Moderate	F,N	Nonsignificant
Runoff Water	--	Moderate	F,N	Nonsignificant
Solid Waste Leachate	--	Low	F	Nonsignificant
Endangered Species	--	Low	F,N	Nonsignificant
Ecology-Terrestrial				
Air Quality	--	High	F,N	Significant
Forest and Woodland	Moderate	Low	F,N	Nonsignificant
Habitat Pollution	--	Moderate	F,N	Nonsignificant
Endangered Species	--	Moderate	F,N	Nonsignificant
Coal Storage	--	Moderate	F,N	Nonsignificant

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TABLE 3. (Continued)

Issue	Concern Expressed in Public Scoping	Concern Due to Context and Intensity of Potential Impacts	Coverage in Broader EISs	Level of Effort and Coverage in the EIR/EIS
Agricultural Lands				
Crop Yeild	--	High	N	Significant
Crop Sales	--	High	N	Significant
Floodplains/Wetlands				
Habitat Removal	--	Low	F,N	Nonsignificant
Habitat Pollution	--	Low	F,N	Nonsignificant
Miscellaneous				
Availability of Coal	Low	(Outside scope of EIR)	F[b], N[c]	None
Coal Transport Facilities	Low	(Outside scope of EIR)	F[b], N[c]	None
Nonfossil Energy Sources	Moderate	(Not an alternative to prohibition order)	F[d]	None
Coordination with Broader EISs	High	(Coordination will occur)	F,N	Significant
Alternative Fuels and Control Technology	Moderate	(Included in alternatives)	F[d], N	Significant
Electricity Rates/Reliability	Moderate	(An analysis of rates/reliability will be included in the EIS by DOE/ERA).	--	

(a) A major focus of the Northwest Regional EIS is the acid rain issue, as a part of an overall emphasis on air quality.

(b) A major focus of the Fuel Use Act EIS was the availability and transportation of fuels.

(c) A major focus of the Northeast Regional EIS will be the availability and the transportation of fuels.

(d) Alternative energy sources and alternative fuels were analyzed within the Fuel Use Act EIS. The alternative analysis in this EIR will include fuels which are permitted under the Fuel Use Act.

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effects, human health and safety, potential conflict with other laws or regulations, and the potential ease with which mitigative or preventative measures may be effectively implemented. More complete information on the analysis of each issue area, from which the context and intensity judgements were derived, is available from DOE/ERA.

The third factor is the degree of coverage in broader or more general environmental impact statements. A number of sections in CEQ regulations (CEQ, 1978) require that analyses and issues covered in other relevant EIS's not be duplicated in the EIS. Where the national or regional impact of a policy or series of actions has been studied and documented, an EIS on a site-specific action, such as the proposed Prohibition Order, should refer to the broader document and focus on the local effects of the action. In the case of prohibition orders under the FUA, there are two major documents of relevance: the EIS on the FUA and the national fuel conversion program, and the Northeast Regional EIS on the cumulative/synergistic effects of conversion to coal in northeastern power plants. The fourth column in Table 3 indicates whether an issue has a moderate or high degree of coverage in one or both of these EIS's.

The combination of these three factors determines the significance of issues in terms of the level of effort and coverage in the EIS. Where public concern or concern due to context and intensity is high, and coverage in other EIS's is low, coverage in the Burlington EIS must be significant. Where coverage in the broader EIS's is high, significance in the Burlington EIS must be carefully targeted toward those impacts within the locality of the plant and those caused specifically or primarily by the proposed action. The last column in Table 3 lists the significance of issues in the EIS as determined by this process.

In addition to the analyses in the EIR, the EIS will address the issue of the economics associated with the conversion of any or all of the affected facilities. Changes in the cost of generating electricity will be estimated taking into account capital, operation and maintenance, and fuel scenarios will be provided. Closure of the facility in response to finalization of the Prohibition Order could affect reliability of service. The EIS will contain an assessment of the change in reliability on both PSE&G and the entire Pennsylvania, New Jersey, Maryland electric region resulting from possible closure of the facility. Changes in reliability will be determined by examining the reserve margins with and without the affected facility.

6.0 PERMIT AND REVIEW REQUIREMENTS

Once a Prohibition Order is made final, the decision concerning how a facility switches fuels under a Prohibition Order is dependent on Federal, State, or local agencies issuing necessary permits. Permit and review requirements can proceed simultaneously with the preparation of the EIS and other support documents.

The permit procedure for securing authorization to change fuels is generally less complex and time consuming than the procedure to secure permits for original siting and construction. The permit process for conversion in most cases simply involves modifying already existing permits and certificates. Several regulatory areas, primarily solid waste and air quality, will require special attention because of the uncertainty inherent in existing or proposed rules or in timing considerations.

The permit and/or review requirements listed in Table 4 must be considered for the proposed conversion of the Burlington Generating Station. The governmental organizations that are authorized to implement these requirements also are listed.

7.0 RELATIONSHIP BETWEEN THE TIMING OF THE PREPARATION OF ENVIRONMENTAL ANALYSES AND THE AGENCY'S TENTATIVE PLANNING AND DECISION-MAKING SCHEDULES

Subsequent to the issuance of a proposed Prohibition Order, a determination is made as to what type of environmental analysis will be required for the site in order to satisfy the requirements of the National Environmental Policy Act. If it is determined that an Environmental Impact Statement must be prepared, a Notice of Intent (NOI) to prepare an EIS is published in the Federal Register as soon as practicable after issuance of the proposed Prohibition Order. A Draft EIS is then prepared and issued simultaneously with the Tentative Staff Analysis. Both documents are made available for

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TABLE 4. PERMIT AND/OR REVIEW REQUIREMENTS ASSOCIATED WITH FUEL CONVERSION OF POWER PLANT FACILITIES IN BURLINGTON, NJ

Subject Area	Permit and/or Review	Organization
Solid and hazardous waste regulation	Registration Statement	New Jersey Department of Environmental Protection (NJDEP)
	Plan Review	Burlington County Planning Board
	Certificate of Public Convenience and Necessity	New Jersey Board of Public Utilities
Air quality regulation	Permit to construct, install, or alter control apparatus equipment	NJDEP
	Certificate to operate control apparatus equipment	NJDEP
	Enforcement Order (Optional)	NJDEP
	Delayed Compliance Order (Optional)	U.S. Environmental Protection Agency (EPA) and NJDEP
Water quality and water resource regulation	National Pollution Discharge Elimination System Permit Modification	U.S. EPA Region II
	Project Approval	Delaware River Basin Commission (DRBC)
	Wastewater Treatment Works Conceptual Review (Stage 1)	NJDEP
	Wastewater Treatment Works Construction Approval (Stage 2)	NJDEP
	Wastewater Treatment Works Operation and Maintenance Approval (Stage 3)	NJDEP
	Steam Encroachment	NJDEP
	Endorsement of Construction/Modification of Wastewater Treatment Works	City of Burlington
	Endorsement of Construction/Modification of Wastewater Treatment Works	Burlington Township

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TABLE 4. (Continued)

Subject Area	Permit and/or Review	Organization
Transportation regulation	Permit for structures or work in or affecting navigable waters of the United States	U.S. Army Corps of Engineers (ACE), Philadelphia District
	Permit for discharge of dredged or fill material into waters of the United States	U.S. ACE, Philadelphia District
	Permits for ocean dumping of dredged material	U.S. ACE, Philadelphia District
	Project Approval	DRBC
	Waterfront Development Permit	NJDEP and New Jersey Department of Energy
	Private Aids to Navigational Application	U.S. Coast Guard, Third District
	Compliance with Federal Coastal Zone Management Act	U.S. Department of Commerce
Occupational health and safety regulation	No permit or review required	
Noise regulation	No permit or review required	
Land use regulation	Municipal Building Permit	City of Burlington
Historical and cultural resources	Review according to Section 106 of National Historic Preservation Act	State Historic Preservation Office and Advisory Council for Historic Preservation
Energy Planning and public utility regulation	Petition for authority to issue stocks, bonds, notes, other evidence of indebtedness, or to execute mortgages	New Jersey Board of Public Utilities

public comment. A Final EIS is issued at least 30 days before the issuance of a final Prohibition Order.

Issuance of a final Prohibition Order is usually a major Federal action requiring preparation of an EIS to comply with NEPA. The goal of achieving conversions as quickly as possible, however, can best be met by having interested Federal, state, and local agencies perform the required environmental reviews simultaneously whenever possible. Therefore, ERA expedites that process by close coordination with those agencies to ensure that EIS's assess the issues and provide the analyses required during the permitting processes. This approach to NEPA compliance minimizes time needed to conduct administrative and regulatory reviews before a conversion may proceed.

Environmental compliance activities start at the same time the proposed Prohibition Order is published and proceed concurrently with administrative procedures. Environmental compliance entails scoping of issues, collection of data, analysis and documentation, and preparation and publication of a draft EIS.

Input is sought actively from agencies with permit authority or other jurisdictional interests. Issuance of the draft EIS is followed by a period of public comment and public hearings. A final EIS, incorporating comments received, precedes issuance of the final order.

Technical analysis proceeds concurrently with administrative and environmental compliance procedures. Normally, such technical analysis includes evaluation of technical capability, financial feasibility of using an alternate fuel, environmental constraints, site limitations, state and local requirements, and fuel supply availability, among other considerations.

Figure 1 displays the Prohibition Order process and milestones after the recipient of the proposed Prohibition Order is identified and resources are made available for processing the Order. The guidelines shown are typical, but may vary according to the complexity of an individual case.

The proposed contractor schedule for deliverables in the Prohibition Order process is presented below:

July 1980	Public Scoping Meeting held for EIS process relative to Burlington Prohibition Order.

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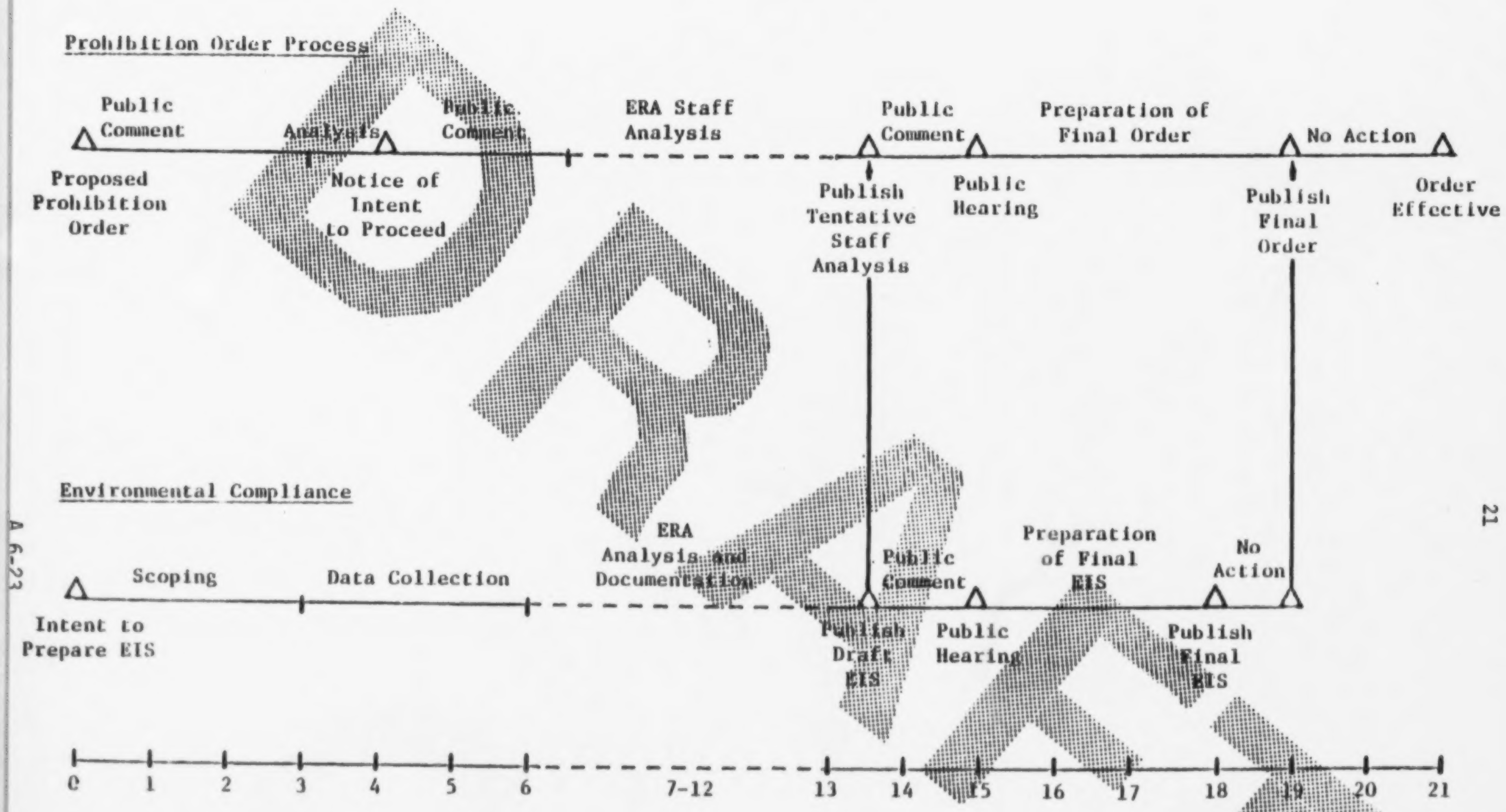
Prohibition Order Process
Public Comment
Proposed Prohibition Order
Analysis
Notice of Intent to Proceed
Public Comment
ERA Staff Analysis
Publish Tentative Staff Analysis
Public Comment
Public Hearing
Preparation of Final Order
Publish Final Order
No Action
Order Effective
Environmental Compliance
Intent to Prepare EIS
Scoping
Data Collection
ERA Analysis and Documentation
Publish Draft EIS
Public Comment
Public Hearing
Preparation of Final EIS
Publish Final EIS
No Action
0
1
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3
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7-12
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21

FIGURE 1. PROHIBITION ORDER PROCESS AND MILESTONES (Δ)

Adapted from United States Department of Energy, 1980b.

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(To be determined)	EIS Implementation Plan made available to Federal, State and local agencies for review and comment.
(To be determined)	Preliminary Draft EIS made available to Federal, State, and local agencies for review and comment.
(To be determined)	Draft EIS made available to the public for review and comment. Concurrently Tentative Staff Analysis issued on proposed Prohibition Order.
(To be determined)	Final EIS made available to the public for review and comment (assumes and EIS public hearing is held and substantial comments are received on the Draft EIS).
(To be determined)	NEPA Record of Decision issued and Final Decision on Prohibition Order published.

8.0 DETAILED OUTLINE OF THE EIS FOR THE ASSESSMENT OF IMPACTS OF THE PROPOSED PROHIBITION ORDER FOR UNIT 7 (BOILER) OF THE BURLINGTON GENERATING STATION OF THE PUBLIC SERVICE ELECTRIC & GAS COMPANY

DOE guidelines for compliance with NEPA (DOE, 1980a) require preparation of an EIS Implementation Plan that is to include a detailed outline of the EIS to be developed for the proposed action. The detailed EIS outline for the proposed Prohibition Order for Unit 8 of the Burlington Generating Station is provided in this chapter. The outline presents the overall EIS content which will be developed consistent with the CEQ regulations for implementing the provisions of NEPA (CEQ, 1978). The title of each chapter in the outline is followed by an estimate of the number of pages for that chapter.

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COVER SHEET

1.0 SUMMARY (4 pp)

- 1.1 Major conclusions
- 1.2 Areas of controversy (including those identified by other agencies and the public)
- 1.3 Issues to be resolved and the proposed action

2.0 INTRODUCTION: (8 pp)

- 2.1 Purpose of and need for proposed action
  - 2.1.1 Relationship to national energy goals
  - 2.1.2 ERA responsibilities as they relate to the administration of FUA
- 2.2 Relationship to other actions
- 2.3 Purpose and scope of the statement
- 2.4 Description of power plant locale and boiler design

3.0 ALTERNATIVES INCLUDING PROPOSED ACTION (15 pp)

- 3.1 Non-Issuance of Prohibition Order (no action)
- 3.2 Issuance of Prohibition Order (proposed action)
  - 3.2.1 Purpose and basis for selection
  - 3.2.2 Alternate fuel candidates
    - 3.2.2.1 Compliance coal
    - 3.2.2.2 Coal with wet FGD
    - 3.2.2.3 Coal with dry FGD
    - 3.2.2.4 Coal with partial FGD
    - 3.2.2.5 Coal/oil mixture
  - 3.2.3 Other fuel candidates
    - 3.2.3.1 Coal/gas mixtures
    - 3.2.3.2 Refuse-derived fuel
    - 3.2.3.3 Petroleum coke
    - 3.2.3.4 Wood
  - 3.2.4 Other energy approaches
    - 3.2.4.1 Conservation/load management
    - 3.2.4.2 Nuclear
    - 3.2.4.3 Solar power
    - 3.2.4.4 Wind power
    - 3.2.4.5 Geothermal
    - 3.2.4.6 Purchase power
  - 3.2.5 Exemption Alternates
    - 3.2.5.1 Temporary Exemptions
    - 3.2.5.2 Permanent Exemptions
- 3.3 Comparison of impacts of proposed action and alternatives
  - 3.3.1 Air
  - 3.3.2 Water
  - 3.3.3 Solid waste
  - 3.3.4 Land
  - 3.3.5 Socioeconomic
  - 3.3.6 Historical and archaeological

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- 3.3.7 Human health
- 3.3.8 Noise
- 3.3.9 Ecology
- 3.3.10 Agricultural lands
- 3.3.11 Floodplains and wetlands

4.0 DESCRIPTION OF AFFECTED ENVIRONMENT (28 pp)

- 4.1 Climatology and air resources
  - 4.1.1 General climatology
  - 4.1.2 Geographic effects
  - 4.1.3 Wind characteristics
  - 4.1.4 Ambient air quality
- 4.2 Water resources
  - 4.2.1 Surface water
    - 4.2.1.1 Present use
    - 4.2.1.2 Availability
    - 4.2.1.3 Ambient water quality
  - 4.2.2 Groundwater
    - 4.2.2.1 Present use
    - 4.2.2.2 Availability
    - 4.2.2.3 Ambient water quality
- 4.3 Land use
  - 4.3.1 Land use characterization of the area
  - 4.3.2 Land use description of the plant site
- 4.4 Socioeconomics
  - 4.4.1 Population and employment
  - 4.4.2 Housing
  - 4.4.3 Services and infrastructure
  - 4.4.4 Local and regional income
  - 4.4.5 Local government finances
  - 4.4.6 Industrial organization
  - 4.4.7 Transportation
  - 4.4.8 Aesthetics (general character of the area)
- 4.5 Historical and archaeological resources
- 4.6 Noise
  - 4.6.1 Ambient sound environment
  - 4.6.2 Summary of sound level
- 4.7 Ecology
  - 4.7.1 Aquatic biota
    - 4.7.1.1 Commercial species
      - 4.7.1.1.1 Fish
      - 4.7.1.1.2 Shellfish
    - 4.7.1.2 Game species
    - 4.7.1.3 Threatened and endangered species
  - 4.7.2 Terrestrial biota
    - 4.7.2.1 Commercial species
    - 4.7.2.2 Game species
    - 4.7.2.3 Threatened and endangered species
- 4.8 Agricultural lands
- 4.9 Floodplains and wetlands (habitat availability)

5.0 ENVIRONMENTAL CONSEQUENCES OF FUEL CONVERSION (95 pp)
(Plant Conversion and Operation Relative to Alternate Fuels)

- 5.1 Air quality
  - 5.1.1 SO_2 concentration and acid rain
  - 5.1.2 NO_x concentration
  - 5.1.3 CO concentration
  - 5.1.4 Ozone/hydrocarbons
  - 5.1.5 TSP concentration
  - 5.1.6 Fugitive dust emissions
  - 5.1.7 Plume opacity
  - 5.1.8 Visibility degradation
  - 5.1.9 Brigantine National Wildlife Refuge
- 5.2 Solid Waste
  - 5.2.1 Dredge spoil disposal
  - 5.2.2 Solid waste disposal (ash and sludge)
  - 5.2.3 Waste transport
- 5.3 Water quality
  - 5.3.1 Surface water
    - 5.3.1.1 Use and consumption
    - 5.3.1.2 Dredging and dredge spoil disposal
    - 5.3.1.3 Central wastewater treatment
    - 5.3.1.4 Construction runoff/erosion
    - 5.3.1.5 Site flooding
  - 5.3.2 Groundwater
    - 5.3.2.1 Use and consumption
    - 5.3.2.2 Coal pile leachate
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6.0 LIST OF CONTRIBUTORS

7.0 REFERENCES

8.0 COMMENTS AND RESPONSES (in Final EIS)

9.0 APPENDICES

9.0 REFERENCES

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SECTION A.7
ENVIRONMENTAL IMPACT STATEMENT

A.7 ENVIRONMENTAL IMPACT STATEMENT

DOE will prepare EISs consistent with the following Council on Environmental Quality (CEQ) regulations 40 CFR 1502.9 through 1502.18:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with the CEQ NEPA Regulations 40 CFR 1500-1508. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate DOE decisionmaker.

(f) DOE shall not commit resources prejudicing selection of alternatives before making a final decision.

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed DOE actions, rather than justifying decisions already made.

Format

DOE shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives, including the proposed action. The following standard format for environmental impact statements should be followed unless there is a compelling reason to do otherwise:

(a) Cover Sheet

(b) Summary

(c) Table of Contents

(d) Purpose of and Need for Action

(e) Alternatives Including Proposed Action (sections 102(2)(C)(iii) and 102(2)(E) of the Act)

(f) Affected Environment

(g) Environmental Consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act)

(h) List of Preparers

(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent

(j) Index

(k) Appendices (if any)

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in 40 CFR 1502.11-1502.18, in any appropriate format.

Section 1502.11, Cover Sheet

The cover sheet shall not exceed one page. It shall include the following:

(a) A list of the responsible agencies, including the lead agency and any cooperating agencies

(b) The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction if applicable) where the action is located

(c) The name, address, and telephone number of the person at DOE who can supply further information

(d) A designation of the statement as a draft, final, or draft or final supplement

(e) A one-paragraph abstract of the statement

(f) The date by which comments must be received (computed in cooperation with EPA under 40 CFR 1506.10.)

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Section 1502.12, Summary

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Section 1502.13, Purpose and Need

The statement shall briefly specify the underlying purpose and need to which DOE is responding in proposing the alternatives, including the proposed action.

Section 1502.14, Alternatives Including Proposed Action

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (40 CFR 1502.15) and the Environmental Consequences (40 CFR 1506.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by DOE and the public. In this section, DOE shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated

(b) Devote substantial treatment to each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits

(c) include reasonable alternatives not within the jurisdiction of (d) and (e)

(d Include the alternative of no action

(e) Identify DOE's preferred alternative or alternatives, if one or more exist, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives

Section 1502.15, Affected Environment

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. DOE shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Section 1502.16, Environmental Consequences

This section forms the scientific and analytic basis for the comparisons under 40 CFR 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(c)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives, including the proposed action; any adverse environmental effects which cannot be avoided should the proposal be implemented; the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in 40 CFR 1502.14. It shall include discussions of the following:

(a) Direct effects and their significance (40 CFR 1508.8)

(b) Indirect effects and their significance (40 CFR 1508.5)

(c) Possible conflicts between proposed action and the objectives of Federal, regional, State, and local (and, in the case of a reservation, Indian tribe) land use plans, policies, and controls for the area concerned (40 CFR 1506.2(d).)

(d) The environmental effects of alternatives, including the proposed action (the comparison under 40 CFR 1502.14 will be based on this discussion)

(e) Energy requirements and conservation potential of various alternatives and mitigation measures

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures

(h) Means to mitigate adverse environmental impacts (if not fully covered under 40 CFR 1502.14(f))

Section 1502.17, List of Preparers

The environmental impact statement shall list the names of persons, together with their qualifications (expertise, experience, professional disciplines), who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (40 CFR 1502.6 and 40 CFR 1502.8). Where possible, the persons responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Section 1502.18, Appendix

If DOE prepares an appendix to an environmental impact statement, the appendix shall

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (40 CFR 1502.21))

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement

(c) Normally be analytic and relevant to the decision to be made

(d) Be circulated with the environmental impact statement or be readily available on request

A.8 PUBLIC NOTICE OF AVAILABILITY OF ENVIRONMENTAL DOCUMENTS/PUBLIC HEARINGS

Consistent with the following Council on Environmental Quality (CEQ) regulations 40 CFR 1506.6, DOE shall:

> "(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.
>
> (1) In all cases the agency shall mail notice to those who have requested it on an individual action.
>
> (2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
>
> (3) In the case of an action with effects primarily of local concern the notice may include:
>
> (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).
>
> (ii) Notice to Indian tribes when effects may occur on reservations.
>
> (iii) Following the affected State's public notice procedures for comparable actions.
>
> (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
>
> (v) Notice through other local media.
>
> (vi) Notice to potentially interested community organizations including small business associations.
>
> (vii) Publication in newsletters that may be expected to reach potentially interested persons.
>
> (viii) Direct mailing to owners and occupants of nearby or affected property.
>
> (ix) Posting of notice on and off site in the area where the action is to be located.
>
> (c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:
>
> (1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
>
> (2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement)."

SAMPLE

DEPARTMENT OF ENERGY

[DOE/EIS-0049-D]

Baca Geothermal Demonstration Power Plant; Availability of Draft Environmental Impact Statement and Public Hearing on the DEIS

AGENCY: Department of Energy.

ACTION: Notice of availability of draft environmental impact statement (DEIS) and public hearing on the DEIS.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft environmental impact statement, DOE/EIS-0049-D, Geothermal Demonstration Program, 50 MWe Power Plant, Baca Ranch, Sandoval and Rio Arriba Counties, New Mexico (July, 1979) for a proposed DOE action to cost share the construction and operation of a geothermal power plant with Union Geothermal Company of New Mexico and Public Service Company of New Mexico. The proposed project would also include installation of a 115,000 volt transmission line to a substation located 30 kilometers from the plant.

Written comments are invited and a public hearing will be held with respect to the DEIS.

DATES: Written comments should be received at DOE by September 7, 1979, in order to insure consideration in preparing the final environmental impact statement. The public hearing is scheduled to be held on August 30, 1979, in Albuqurque, New Mexico, from 9:00 a.m. to 5:00 p.m. Depending on the response to this notice, the hearing may be continued on August 31. Intentions to speak and preferred times (e.g., a.m. or p.m.) should be received at DOE by August 15.

ADDRESSES: Written comments on the DEIS and intentions to speak at the hearing should be addressed to: Department of Energy, Attention: Mr. Bennie G. DiBona, ET-57, Division of Geothermal Energy, MS 3122C, Washington, D.C. 20585. The public hearing will be held at the Shalako Motor Inn, 12901 Central Avenue NE, Albuquerque, New Mexico 87123.

FOR FURTHER INFORMATION YOU MAY CONTACT:

1. Mr. Robert Oliver, U.S. Department of Energy, Division of Geothermal Energy, Mail Stop 3122C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585. Phone: 202/376-1690.
2. Mr. Arthur Wilbur, Department of Energy, Plaza del Sol Bldg., Room 712, 600 Second Street, NW., Albuquerque, New Mexico 87102. Phone: 505/766-3823.
3. Dr. Robert J. Stern, EV-11, Acting Director, NEPA Affairs Division, Mail Stop 4228, 20 Massachusetts Avenue, NW., U.S. Department of Energy, Washington, D.C. 20585. Phone: 202/376-5803.
4. Mr. Stephen H. Greenleigh, Acting Assistant General Counsel for Environment, Mail Stop 6A-152, Forrestal Bldg., SW., U.S. Department of Energy, Washington, D.C. 20585. Phone: 202/252-6947.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The Department of Energy published a Notice of Intent (44 FR 7908) on February 8, 1979, regarding the preparation of a draft EIS on the Baca geothermal demonstration power plant.

II. Background for the Proposed Project

The applicants, Union Oil and Public Service of New Mexico, jointly responding to a DOE Request for Proposal, proposed to construct and operate a 50 MWe single flash geothermal powerplant. DOE support, through sharing of capital costs, is sought to complete well-field development and construct a 50 MWe powerplant and necessary transmission lines. The proposed project would be located within the Valles Caldera, on the Baca Ranch (private land) in Sandoval and Rio Arriba Counties, New Mexico. The project site is approximately 30 kilometers (km) west of Los Alamos and 98 km north of Albuquerque. The proposed well-field and plant site are located within Redondo Creek Canyon in an area of approximately 300 hectares (ha). The proposed project would require construction of at least 30 km of 115 kilovolt (kv) transmission lines that would cross lands of the Santa FE National Forest, the Los Alamos Scientific Laboratory Site, private lands, and, depending on the alternative transmission corridor selected, lands of the Bandelier National Monument.

To date, Union Oil has drilled eighteen wells at the site. Thirteen to sixteen additional wells will have to be drilled and flow-tested to complete field development for the resource required for the proposed 50 MWe capacity plant.

III. Scope of the DEIS

The DEIS addresses the potential impact of the DOE cost-shared funding of the construction and operation of a 50 MWe plant and its associated well-field and transmission lines. In addition, the potential long-range and cumulative impacts of possible future expansion of the resource to support a 400 MWe complex are discussed.

The range of alternatives addressed in the DEIS includes the no action alternative, funding a plant at other locations, and alternative uses of the geothermal resource. Alternative plant designs and alternative transmission corridors are also addressed.

III. Comment Procedures

A. Availability of Draft EIS

Copies of the DEIS have been distributed to Federal, State, and local agencies, organizations, and to individuals known to be interested in the Baca geothermal demonstration power plant. Additional copies may be obtained from the Baca Geothermal Demonstration Project Office, U.S. Department of Energy, Plaza del Sol Bldg., Room 712, 600 Second Street, NW., Albuquerque, New Mexico 87102, (Phone: 505/766-3823) or from the Division of Geothermal Energy at the Washington, D.C. address given above.

Copies of the DEIS and copies of the documents used in preparing the DEIS are available for public inspection at: Santa Fe National Forest Office, Federal Post Office Building, Paseo de Peralta, Santa Fe, New Mexico.

A copy of the bibliography of these documents as well as copies of the DEIS are also available for public inspection at the following locations:

Public Reading Room, FOI Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC

Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, New Mexico.

Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.

Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Illinois.

Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho

Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada

Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.

Richland Operations Office, Federal Building, Richland, Washington.

Energy Information Center, 215 Fremont Street, San Francisco, California

Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.
Regional Energy/Environment Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado.

B. Written Comments

Interested parties are invited to provide written comments on the DEIS to the Division of Geothermal Energy at the Washington, DC address given above. Comments should be identified on the outside of the envelope with the designation "Draft EIS on Baca Demonstration Power Plant." All comments and related information should be received by DOE by September 7, 1979, in order to insure consideration in preparing the final statement.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

C. Public Hearing

1. Participation Procedure. A public hearing on the draft statement will be held at the Shalako Motor Inn, 12901 Central Avenue NE, Albuquerque, New Mexico, on August 30, 1979 from 9:00 a.m. to 5:00 p.m. to provide an opportunity for oral presentations by interested persons. Depending on the responses to this notice, the hearing may be continued on August 31.

A DOE official will designate a presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing.

Any person who desires to speak at the hearing should notify the Division of Geothermal Energy at the Washington, D.C. address listed above before August 15, 1979, so that time can be scheduled. Although not required, persons who intend to speak are encouraged to provide a brief summary of the presentation. Each person desiring to speak will be notified in writing by DOE before August 23, 1979, of the time schedules for the presentations and of the time available. Speakers will also be notified by telephone if numbers are provided.

Individuals who did not make an advance arrangement to speak may register to speak at the hearing. After all scheduled speakers, an opportunity will be provided to these individuals to speak. Time for each participant will be limited depending on time available and the number of responses.

2. Conduct of Hearing. DOE will arrange the schedule of presentations to be heard and will establish basic rules and procedures for conducting the hearing. The length of each presentation may be limited, depending on the number of persons desiring to speak.

Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, and at the Geothermal Demonstration Project Office, Plaza del Sol Building, Room 712, 600 Second Street, NW, Albuquerque, New Mexico 87102, between the hours 8:00 a.m. and 4:30 p.m., Monday through Friday. Additional copies of the complete transcript will also be available at the public document centers noted above. Any person may purchase a copy of the transcript from the reporter.

D. Public Meetings

In addition to the public hearing, DOE will also conduct an informal public information meeting on the DEIS in one or more of the communities in the proximity of the proposed project. DOE will issue specific information on the time and place of the meetings in the local news media.

Issued in Washington, D.C., July 3, 1979.

James L. Liverman,

Deputy Assistant Secretary for Environment.

[FR Doc. 79-21147 Filed 7-6-79; 8:45 am]

BILLING CODE 6450-01-M

SECTION A.9
NEPA DOCUMENT CIRCULATION

A.9 CIRCULATION OF ENVIRONMENTAL IMPACT STATEMENTS

CEQ Regulations

The Council on Environmental Quality (CEQ) regulations 40 CFR 1502.19 state that:

> "Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in 40 CFR 1502.18(d) and unchanged statements as provided in 40 CFR 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:
>
> a. Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state, or local agency authorized to develop and enforce environmental standards.
>
> b. The applicant, if any.
>
> c. Any person, organization, or agency requesting the entire environmental impact statement.
>
> d. In the case of a final environmental impact statement, any person, organization, or agency which submitted substantive comments on the draft.
>
> If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period."

DOE Circulation Procedures

The Responsible Supervisory Official (RSO) is responsible for circulating NEPA documents, with assistance from the Office of Environment (EV)/NEPA Affairs Division (NAD). The procedures for mailing lists and transmittal letters are as follows:

1. Mailing Lists

   The RSO should consult with NAD to develop mailing lists to be used to circulate the Notice of Intent to Prepare an EIS, the Draft EIS, and the Final EIS.

(a) NAD will provide master mailing lists for;

- Environmental Protection Agency
- Office of Management and Budget
- Other Federal Agencies With Jurisdiction by Law or Other Special Expertise
- State Agencies
- Congress
- Governors
- Major Environmental Groups
- Personal Inquiries Directed to the Assistant Secretary for Environment

(b) The RSO will review the master list for appropriate recipients for a specific project and supplements the list on a case by case base with:

- Affected Indian Tribes
- Other Potentially Interested Parties
- Local Agencies
- industrial/Trade Organizations
- Local Requesters

Note: A copy of the supplemental mailing list will be forwarded to NAD.

2. Transmittal Letters (Samples Follow)

(a) The EIS is transmitted to the following entities under ASEV signature:

- Environmental Protection Agency
- Office of Management and Budget
- Congress
- Governors
- Major Environmental Groups
- Personal Inquiries Directed to the Assistant Secretary for Environment

(b) The RSO is responsible for transmitting EIS's to:

- Other Federal Agencies With Jurisdiction by Law or Other Special Expertise
- State Agencies
- Affected Indian Tribes
- Potentially Interested Parties
- Local Agencies
- Local Requesters

Note: The transmittal letters should be forwarded to the NAD at the same time EIS's are submitted for review and approval.

SAMPLE 1

TRANSMITTAL LETTER - DRAFT EIS TO EPA

Mr. William N. Hedeman, Jr., Director
Office of Environmental Review (A-104)
Environmental Protection Agency
Room 2119, Waterside Mall
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Hedeman:

Enclosed are five copies of the Department of Energy draft Environmental Impact Statement, DOE/EIS-0049-D, Geothermal Demonstration Progam, 50 megawatt electrical Power Plant, Baca Ranch, Sandoval and Rio Arriba Counties, New Mexico (July 1979). The statement has been prepared in compliance with the National Environmental Policy Act of 1969 to assess the environmental impacts of a proposed Department of Energy action to cost-share the construction and operation of a 50 megawatt electrical geothermal power plant to be located within the Valles Caldera on the private lands of the Baca Ranch. The proposed action also includes the completion of the well field to support the plant and the construction of at least 30 kilometers of 115 kilovolt transmission lines.

Copies of the draft statement are being provided for comment to the Departments of Agriculture; Commerce; Defense (Corps of Engineers); Health, Education and Welfare; Housing and Urban Development; Interior; Transportation; Advisory Council on Historic Preservation; Community Services Administration; Environmental Protection Agency, Region 6; Federal Energy Regulatory Commission; National Science Foundation; Nuclear Regulatory Commission; the Water Resource Council; the State of New Mexico; local governments; Indian Pueblos; and other organizations and individuals who are known to have an interest in this activity. The comment period ends on September 7, 1979.

Copies are also being provided to Congress and the Office of Management and Budget. A notice of the availability of the draft statement and public hearing on the draft statement will be placed in the Federal Register.

Please let us know if we can provide any additional information.

Sincerely,

Ruth C. Clusen
Asssistant Secretary
for Environment

Enclosures:
1. Summary Sheet (5)
2. Draft Environmental Impact
   Statement, DOE/EIS-0049-D (5)

SAMPLE 2

TRANSMITTAL LETTER - FINAL EIS TO EPA

Mr. William N. Hedeman, Jr., Director
Office of Environmental Review (A-104)
Environmental Protection Agency
Room 2119, Waterside Mall
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Hedeman:

Enclosed are five copies of the Department of Energy final environmental impact statement, DOE/EIS-0012-F, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills), Kern County, California.

The final statement was prepared in compliance with the National Environmental Policy Act of 1969 to assess the environmental impacts of DOE's proposed administrative action in implementing the Naval Petroleum Reserves Production Act of 1976, Public Law No. 94-258, which provided for the opening up of the Naval Petroleum Reserves for production at maximum efficient rates for a period of six years, with additional open-up periods of three years each if recommended by the President and approved by Congress. The proposed action will increase crude oil production from the current 160,000 barrels per day to a peak of 200,000 to 240,000 barrels per day in 1982.

Comments on the draft statement were received from the Departments of Agriculture; Army; Interior; Transportation; the Advisory Council on Historic Presevation; the Environmental Protection Agency; state, regional and local government agencies; private organizations; and individual citizens.

Copies of the final statement are being provided to Congress, the Office of Management and Budget, and to agencies, organizations, and persons who commented on the draft statement or who requested a copy of the final statement.

Please list this final Environmental Impact Statement in your next weekly Federal Register report with a note that copies of the Environmental Impact Statement may be obtained from: Mr. Richard Russell, Environmental Coordinator, Office in Charge of Construction, Elk Hill, P.O. Box 40, San Bruno, California 94066, (415) 877-7064.

Sincerely,

Ruth C. Clusen
Assistant Secretary
for Environment

Enclosures: Final Environmental
Impact Statement, DOE/EIS-0012 (5)

SAMPLE 3

TRANSMITTAL LETTER - DRAFT EIS TO:
- OFFICE OF MANAGEMENT AND BUDGET
- CONGRESS
- GOVERNORS
- MAJOR ENVIRONMENTAL GROUPS
- PERSONAL INQUIRIES DIRECTED TO THE ASSISTANT SECRETARY FOR ENVIRONMENT

Dear ______

Enclosed is a copy of the Department of Energy draft Environmental Impact Statement, DOE/EIS-0049-D, Geothermal Demonstration Program, 50 megawatt electrical Power Plant, Baca Ranch, Sandoval and Rio Arriba Counties, New Mexico (July 1979). The statement has been prepared in compliance with the National Environmental Policy Act of 1969 to assess the environmental impacts of a proposed Department of Energy action to cost-share the construction and operation of a 50 megawatt electrical geothermal power plant to be located within the Valles Caldera on the private lands of the Baca Ranch. The proposed action also includes the completion of the well field to support the plant and the construction of at least 30 kilometers of 115 kilovolt transmission lines.

A public hearing on the draft statement will be held at the Shalako Motor Inn, 12901 Central Avenue NE, Albuquerque, New Mexico, on August 30, 1979 from 9:00 a.m. to 5:00 p.m. to provide an opportunity for oral presentations by interested persons. Any person who desires to speak at the hearing should notify the Division of Geothermal Energy at the Washington, D.C. address listed above before August 15, 1979.

The comment period ends on September 7, 1979.

Sincerely,

Ruth C. Clusen
Assistant Secretary
for Environment

Enclosures:
1. Draft Environmental Impact Statement, DOE/EIS-0049-D

SAMPLE 4

TRANSMITTAL LETTER - FINAL EIS TO:

- OFFICE OF MANAGEMENT AND BUDGET
- CONGRESS
- GOVERNORS
- MAJOR ENVIRONMENTAL GROUPS
- PERSONAL INQUIRIES DIRECTED TO THE ASSISTANT SECRETARY FOR ENVIRONMENT

Dear _________:

I am pleased to enclose a copy of the Department of Energy final Environmental Impact Statement, DOE/EIS-0012-F, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills), Kern County, California.

The final statement was prepared in compliance with the National Environmental Policy Act of 1969 to assess the environmental impacts of the Department of Energy's proposed administrative action in implementing the Naval Petroleum Reserves Production Act of 1976, Public Law No. 94-258, which provided for the opening up of Naval Petroleum Reserve No. 1 for production at maximum efficient rates for a period of six years, with additional openup periods of three years each if recommended by the President and approved by Congress. The proposed action will increase crude oil production from the current 160,000 barrels per day to a peak of 200,000 to 240,000 barrels per day in 1982.

Copies of the final environmental impact statement are being provided to agencies, organizations, and persons who commented on the draft environmental impact statement or who requested a copy of the final statement. The review period for the final Environmental Impact Statement ends 30 days after its availability is announced in the Federal Register weekly report of the Environmental Protection Agency.

Sincerely,

Ruth C. Clusen
Assistant Secretary
for Environment

Enclosure: Final Environmental
Impact Statement, DOE/EIS-0012 (1)

SAMPLE 5

TRANSMITTAL LETTER - DRAFT EIS TO:

- OTHER FEDERAL AGENCIES WITH JURISDICTION BY LAW OR OTHER EXPERTISE
- AFFECTED STATE AGENCIES
- AFFECTED INDIAN TRIBES
- POTENTIALLY INTERESTED PARTIES
- LOCAL AGENCIES
- LOCAL REQUESTERS

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The comment period ends on September 7, 1979.

Sincerely,

Responsible Supervisory
Official

Enclosures:
1. Draft Environmental Impact Statement, DOE/EIS-0049-D

SAMPLE 6

TRANSMITTAL LETTER - FINAL EIS TO:

- OTHER FEDERAL AGENCIES WITH JURISDICTION BY LAW OR OTHER EXPERTISE
- AFFECTED STATE AGENCIES
- AFFECTED INDIAN TRIBES
- POTENTIALLY INTERESTED PARTIES
- LOCAL AGENCIES
- LOCAL REQUESTERS

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Copies of the final Environmental Impact Statement are being provided to agencies, organizations, and persons who commented on the draft Environmental Impact Statement or who requested a copy of the final statement. The review period for the final Environmental Impact Statement ends 30 days after its availability is announced in the Federal Register weekly report of the Environmental Protection Agency.

Sincerely,

Responsible Supervisory
Official

Enclosure: Final Environmental
Impact Statement, DOE/EIS-0012 (1)

PUBLIC HEARING PROCEDURES

A.10 PROCEDURES FOR PUBLIC HEARINGS

Under development.

A.11 RECORD OF DECISION IN CASES REQUIRING ENVIRONMENTAL IMPACT STATEMENT

Consistent with the Council on Environmental Quality (CEQ) regulations 40 CFR 1505.2, the Department of Energy (DOE) shall:

> "at the time of its decision or, if appropriate, its recommendation to Congress, prepare a concise public record of decision. The record, which may be integrated into any other record prepared by DOE, including that required by Office of Management and Budget Circular A-95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:
>
> (a) State what the decision was.
>
> (b) Identify all alternatives considered by DOE in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. DOE may discuss preferences among alternatives based on relevant factors, including economic and technical considerations and DOE statutory missions. DOE shall identify and discuss all such factors, including any essential considerations of national policy which were balanced by it in making its decision, and state how those considerations entered into its decision.
>
> (c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation."

The following procedures are to be used in conjunction with Section 1505.2 of the Council on Environmental Quality regulations and Paragraph B.2.(a)(5) of the Department of Energy NEPA Guidelines (45 FR 20694):

a. Preparation of the Record of Decision by the Responsible Supervisory Official and review and approval (for content only) by the Assistant Secretary for Environment after consultation with the Office of the General Counsel.

b. Decisionmaking by the Responsible Supervisory Official after the Assistant Secretary for Environment evaluates proposed and alternative program/regulatory/legislative actions described in Department of Energy environmental impact statements and makes any appropriate environmental recommendations to the Responsible Supervisory Official. For major system acquisitions, major projects, and major programmatic execution activities, the Responsible Supervisory Official will notify the Assistant Secretary for Environment sufficiently in advance of the decision to allow the Assistant Secretary for Environment to advise the Under Secretary on the environmental aspects. Notice of decisions on other projects will be given to the Assistant Secretary for Environment with adequate time for the Office of Environment to comment.

Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 23, 1980.

Edward A. Frieman,

Director of Energy Research.

[FR Doc. 80-14702 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Geothermal Demonstration Program; Record of Decision

Pursuant to Regulations of Council on Environmental Quality (40 CFR Part 1505) Implementing Procedures of U.S. Department of Energy (45 FR 20694).

Decision

The U.S. Department of Energy (DOE) has elected to jointly fund a project to build and operate a 50 megawatt (MWe), goethermal demonstration power plant at Baca Location No. 1 in Sandoval County, New Mexico, under a cooperative agreement with the Union Geothermal Company of New Mexico and the Public Service Company of New Mexico.

Project Description

The geothermal demonstration power plant project will convert the heat energy from a geothermal resource into electric power. The project's goal is to show that electricity can be produced from this nation's geothermal resources in an economical and environmentally acceptable manner. The project involves the design, construction, and operation of a commercial-scale, electric power plant using a liquid-dominated hydrothermal reservoir as an energy source. Liquid-dominated hydrothermal reservoirs are the most common type of geothermal resource. Information derived from the project will be made available to the geothermal industry and other interested groups as a means to accelerate geothermal resource development.

The demonstration plant will be located on about 746 acres of land within Baca Location No. 1 (Baca), a private landholding in north-central New Mexico. The site is approximately 60 miles north of Albuquerque and 19 miles west of Los Alamos. The plant will be a single-flash steam unit generating 50 MWe gross from 103 psi steam. The steam supply system will consist of 15-17 geothermal wells, piping, 4 steam separators, and a liquid waste injection system. Other plant systems will include: turbine-generator, shell-and-tube condenser, mechanical draft cooling tower, hydrogen sulfide abatement system, and an electrical switchyard. Electricity will be transported from the site by a 115-kV transmission line which will connect the plant to a substation near Los Alamos. Pending a right-of-way permit from the U.S. Forest Service, the transmission route will be the northerly of the two alternatives described in DOE's Final Environmental Impact Statement (FEIS) for the project. Of the two alternatives this route will have the lesser environmental impact.

The project will be cost-shared about equally between DOE and its industrial partners, the Union Geothermal Company of New Mexico (Union) and the Public Service Company of New Mexico (PNM), under a cooperative agreement. The industrial partners will be responsible for building and operating the plant. Title to all facilities and equipment acquired during the course of the project will vest in the industrial partners. DOE will end its participation in the project after 5 years of plant operation.

Description of Alternatives

The following alternatives were considered by DOE in reaching its decision:

1. Do not participate in the funding of the project (no Federal action);
2. Delay funding of the project;
3. Fund a nonelectric use of the geothermal resource;
4. Develop a different site within the Baca;
5. Develop a different site at another location within the United States;
6. Use an alternate plant design;
7. Use and alternate transmission route.

Alternatives 1, 4, and 5 would result in no action being taken at the site of the proposed project. The remaining alternatives would involve some form of activity at the site.

Alternatives 4-7 contain options within each alternative. Under alternative 4, two other sites near the proposed site within Redondo Canyon were considered, as well as the Sulfur Canyon area. Redondo Canyon and Sulfur Canyon are the two areas of known geothermal resources within Baca. Other locations within the United States (alternative 5) that were considered included: (1) Imperial Valley, California; (2) Roosevelt Hot Springs, Utah; and (3) Beowawe, Nevada. At present, these are the only other locations with confirmed liquid-dominated hydrothermal resources to support a 50 MWe demonstration power plant. Under alternative 6, different system designs were considered for: condenser cooling, hydrogen sulfide abatement, and power cycle. These are the plant systems most likely to affect the environment. Besides the two transmission routes to the Los Alamos substation, two other routes (alternative 7) were considered. These routes would tie the plant to the load center at Albuquerque via a substation at San Ysidro.

Basis for Decision

Recent international events underscore the need to decrease this nation's dependence on imported energy. The inflationary pressure wrought by the high cost of energy imports has affected the national economy. Energy has become an international economic and political weapon which, at present, can be used against the United States.

As one means of coping with the problem of dependence on foreign oil, the Congress passed the "Federal Non-nuclear Energy Research and Development Act of 1974" (Pub. L. 93-577). This law calls for the implementation of a program to develop the broadest range of non-nuclear energy options on an urgent basis. Geothermal energy is one such option. It can figure prominently in helping to alleviate the Nation's criticial shortage of environmentally acceptable energy sources.

If developed vigorously, DOE believes geothermal energy can contribute 5 percent of the Nation's energy supply by the year 2000. The most plentiful geothermal resource, the liquid-dominated hydrothermal (hot-water) resource, could produce as much as 20,000 MWe of electric power within 20 years.

Congress has recognized the great potential of geothermal energy by enacting the "Geothermal Energy Research, Development, and Demonstration Act of 1974" (Pub. L. 93-410). The law directs that a national Geothermal energy research, development, and demonstration program be pursued. That program is to include: (1) An inventory and assessment of geothermal resources; (2)

development of exploration, extraction, and utilization of technologies; (3) design, construction and operation of demonstration plants; and (4) establishment of a loan guaranty program. The intent of the Congress is clear: Geothermal resources must be developed to their maximum practicable capability, and a demonstration program is an esential component of that development. Accordingly, under Pub. L. 95-238 the authorization and an initial appropriation of $12 million were given for the first geothermal demonstration power plant. These actions were critical steps in implementing the national energy policy of accelerating the development of new domestic energy sources.

A survey of geothermal industry representatives, including 25 developers, 23 utilities, 13 engineering firms, and 6 financial institutions, found over a 2 to 1 ratio in favor of a Government-supported demonstration power plant. At present, much of the industry is reluctant to act totally on its own. The reasons for this reluctance depend on which industry sector is involved, but they all relate to a lack of confidence. The industry needs to acquire the confidence that geothermal energy can be produced profitably and at low risk. Such confidence can be gained from a federally-supported, commercial-scale demonstration power plant.

The geothermal demonstration power plant project at Baca is DOE's major programmatic effort to stimulate commercial development of hot-water geothermal resources in fracture-dominated reservoirs. The project is not intended to demonstrate a new technology; the technology is well known. Rather, the project is intended to show that hot-water geothermal energy is economically competitive, reliable, and environmentally and socially acceptable.

Whereas several hot-water geothermal power plants have been built and operated successfully in other countries, they do not reflect the market conditions that prevail in this country. There is still much hesitancy on the part of developers, utilities, and lenders to proceed with geothermal development. Recently, some cautious, tentative steps have been taken, aided in part by the geothermal loan guaranty program. Albeit the private development of several prime geothermal resources in the Imperial Valley of California is encouraging, it does not obviate the need for the demonstration project.

DOE has authorized contract negotiations with San Diego Gas & Electic Company to build a 50 MWe, binary-cycle geothermal power plant at Heber in Imperial Valley. The primary objective of this plant is to demonstrate the binary conversion technology at a commercial scale in a moderate temperature resource. The other resources in Imperial Valley are being developed at less than commercial scale. Magma Power Company is building a 10 MWe pilot plant at East Mesa. At Brawley, Union Oil Company and Southern California Edison are also building a 10 MWe pilot plant, and at Salton Sea, Magma Power Company may build a 10 to 20 MWe flashsteam pilot plant. Apparently, commercial-size (50 MWe or greater) power plants will not be considered by these firms until the results from the pilot plants are known.

Nor are the detailed results from the pilot plants or other private developments likely to be given to the general public. In contrast, the demonstration project will yield technical, economic, and environmental information which will be immediately distributed to the geothermal industry and other interested parties. Such information will influence corporate decisions about proceeding with the commercial development of geothermal resources. Similar information from private developments in Imperial Velley and elsewhere will not be made available so freely or quickly.

Even if information from plants in Imperial Valley were freely available, it would probably not stimulate development at many new locations. The geothermal resources in Imperial Valley occupy a sedimentary basin, a reservoir type which is representative of less than half of this nation's known geothermal resources. The demonstration project will use a fracture-dominated reservoir, the predominant type outside Imperial Valley. Thus information from the demonstration power plant will have broader applicability than similar information from Imperial Valley plants.

At the present time, Baca is the best place to prove the commercial viability of hot-water geothermal resources from fracture-dominated reservoirs. The size of the resource at Baca is large, and DOE's industrial partners have affirmed their intention to proceed with full scale development as quickly as possible. This intention is consistent with DOE's objectives for the demonstration program and satisfies the national policy of hastening the commercial use of alternative energy sources.

The geothermal demonstration power plant project at Baca was selected through a competitive procurement process. A Program Opportunity Notice was issued by DOE on September 30, 1977. Two firm proposals were received. They were ranked by a Source Evaluation Board, and the proposal by Union-PNM was judged superior.

The advantages of supporting Union-PNM to build and operate a demonstration plant at Baca include:

1. *System Design.* These are no technological uncertainties; all major components have proven performance records. The hydrogen sulfide abatement system employs the best commercially available technology. Cooling tower makeup will be supplied by steam condensate, thereby minimizing the plant's water requirements. The plant is very likely to perform at or better than design specifications.

2. *Geothermal Resource.* The geothermal resource is high grade, having a high temperature (260 deg C) and a low salinity (10,000 ppm TDS), and is typical of many other high grade resources in the country. The geothermal reservoir is very likely to provide sufficient energy to operate a 50 MWe power plant for 30 years. Estimates of the ultimate commercial potential of the resource range from a minimum of 400 MWe to greater than 2000 MWe. The resource could figure prominently in the future energy supply of New Mexico and nearby states.

3. *Service Area.* The plant will serve Los Alamos, an area which has experienced voltage drop problems in the past and will likely have an increased power demand in the future. The Los Alamos Scientific Laboratory, a weapons development facility of national importance, will use a sizeable fraction of the power generated.

4. *Capabilities of the Government's Partners.* Union Geothermal Company, a subsidiary of Union Oil Company, is a major industial concern with 20 years of experience in geothermal energy development. The Public Service Company of New Mexico is a privately-owned utility serving over half the residents of New Mexico. Both partners have made firm commitments to developing and using geothermal energy, and they have assembled a capable, experienced staff to manage the project.

5. *Cost Sharing.* Project costs will be shared about equally between the Government and its partners. Both partners have more than adequate financial resources to complete the project. Union Oil Company has an AA credit rating; PNM's bond rating is AA. Under terms of the cooperative agreement, the Government's share in the cost of the plant is fixed; Union-PNM will pay for any cost overruns except those caused by delays in completing the NEPA process. After six years of

successful commercial operation, Union will reimburse the Government for up to as much as 50 percent of DOE's share in the cost of the plant.

6. *Information Gathering and Dissemination.* Technical, economic, and environmental data from all phases of the project will be collected and analyzed. The resultant information will be promptly and freely distributed to the geothermal industry, regulatory agencies, and the interested public. A comprehensive public communications effort will be conducted.

The project's major disadvantage is the potential for environmental and institutional impacts. The major issues of concern are: (1) Degradation of air quality due to the release of hydrogen sulfide; (2) depletion of surface and ground water supplies; (3) infringement on Indian religious practices; (4) reduction in the number of land use options for the Baca; (5) destruction of habitat of the Jemez Mountains salamander, a New Mexico State endangered species; and (6) scenic intrusion from the transmission line.

Should the 50 MWe demonstration project prove successful, there is a reasonable likelihood that DOE's industrial partners would pursue development of the entire geothermal resource at Baca. The environmental effects of exploiting those resources could be proportionately greater than the effects from a single 50 MWe power plant. Environmental information from the demonstration project will be available to help in determining the extent of those effects. DOE believes that with proper planning and mitigation the impacts from full scale geothermal development can be held within acceptable limits.

In summary, the geothermal demonstration power plant project fulfills the congressional mandate given in 1974 to include demonstrations as part of the national geothermal program. The project satisfies DOE's programmatic need to show the economic integrity of commercial power generation from hot water resources. If successful, the project should foster rapid geothermal development in the Baca and elsewhere. That development is essential if geothermal energy is to achieve its potential of up to 20,000 MWe by the year 2000.

Discussion of Environmentally Preferred Alternatives

Of the seven action alternatives, alternatives 1, 2, 5, and 6 were judged to be environmentally preferred. Alternatives 3, 4, and 7 would impact the Baca area at least as much as the proposed project. Any nonelectric use equivalent to a 50 MWe power plant (alternative 3) would cause greater environmental impact, besides being inconsistent with the goals of the demonstration. Since alternatives 3, 4, and 7 offered no substantive advantages over the proposed project, they were rejected.

The ultimate environmental consequences of alternative 1 (no Federal action) and alternative 2 (delay funding of the project) are essentially the same. Although DOE may withdraw from the project (i.e., no Federal action), the industrial partners would be free to proceed if they so choose. The resultant delay in the development of the Baca's geothermal resources could be as long as 5 to 10 years. A delay in Federal funding (alternative 2) would probably cause a somewhat shorter hiatus in development. No major breakthroughs in plant design or control technology that would reduce environmental impacts are likely during the interim. Therefore, the ultimate environmental impacts from the two alternatives would probably not differ greatly from each other or those of the proposed project.

Alternatives 1 and 2 appear to offer no clearcut environmental advantages over the proposed project in the long term. However, they do have major programmatic disadvantages. Alternative 1 would result in neither a demonstration as authorized by Congress nor information on the economics of power production from hot-water resources. Alternative 2 would postpone the transfer of information to the geothermal industry, thereby retarding the development of those resources. Both alternatives contradict national energy policy to accelerate the use of alternative energy sources. The adoption of either one would indicate to the public a lack of urgency on the Government's part to develop new energy sources. In view of these consideration, the two alternatives were rejected.

Under alternative 5, three different areas were considered as candidate sites for a demonstration project: (1) Imperial Valley, California; (2) Roosevelt Hot Springs, Utah; and (3) Beowawe, Nevada. Of these, only Heber in the Imperial Valley was actually proposed as a site in response to the Program Opportunity Notice. Heber has several environmental advantages in comparison with Baca. At Heber, there are no conflicts over land use; the natural setting has already been altered by agricultured practices; there are no rare and endangered species, nor are there any cultural or archeological resources nearby; and there is a ready supply of cooling water. Institutionally, there are no known impacts on Indian tribes or other groups.

Despite its positive environmental and institutional aspects, Heber was rejected as the site of the demonstration project. The Heber proposal was judged to have major technical, management and business weaknesses; it was not fully responsive to several program objectives.

Moving the demonstration plant to another site would require reissuing the Program Opportunity Notice. This action would produce an additional 2–3 year delay in the demonstration program. And there is still no assurance that an acceptable project at an environmentally preferred site would be proposed. The resultant delay in finding another site would probably reinforce industry's hesitancy to use geothermal energy. An effect contrary to national energy policy may be produced: geothermal energy development plans by industry could be cancelled or deferred. In addition, several of the advantages inherent to the Baca project would probably be lost or changed. These include the provisions for a Government cost ceiling and revenue sharing. A similar demonstration plant at another locality would cost more, resulting in higher costs to the Government. On the basis of these factors, alternative 5 was rejected.

Design variations in major plant systems affecting the environment were also considered (alternative 6). These included the cooling system, hydrogen sulfide abatement system, and power cycle.

Of the available cooling system options, dry cooling towers and wet/dry cooling towers are environmentally preferable. Both system consume far less water than wet towers. Dry cooling towers are especially effective, and they also eliminate the cooling system as an emission source for noncondensable gases and drift. However, dry cooling towers operate at high turbine back pressures with concomitant losses in plant efficiency. Wet/dry towers, which operate in either wet or dry mode depending on air temperature, would have intermediate effects in terms of water consumption, emissions, and plant efficiency. Industry studies show both options would increase power plant costs per kilowatt at least 50 percent over the cost of a plant using a wet cooling system. The demonstration plant's wet cooling system will use steam condensate for makeup, thereby minimizing fresh-water requirements. Hence, the net benefits gained by using optional cooling systems were judged not to be worth the increased cost.

The plant will employ the Stretford process for hydrogen sulfide abatement. This process represents the best commercially available technology for removing hydrogen sulfide from geothermal fluids. The copper sulfate process currently under development may be superior, but a scrubbing system using this process has not been operated at a commercial scale. Since commercially available technology is a key requisite of the demonstration, the copper sulfate process was rejected. Other commercially available abatement systems are either too expensive or too inefficient to be considered. Furthermore, the Stretford-based system will enable the plant to meet the New Mexico ambient air standard for hydrogen sulfide.

The plant will have a single-flash design for extracting geothermal heat. This power cycle design is consistent with the quality of the resource. A binary cycle design, in which heat is transferred to a working fluid, has environmental advantages: the geothermal fluid is contained; there are practically no gaseous emissions, and all fluids are returned to the reservoir. On the other hand, all cooling water makeup must be obtained from an external source. Binary cycles operate more efficiently at moderate temperatures (150–200 deg C), whereas the geothermal fluids at Baca exceed 250 deg C. A binary design was rejected at Baca because of higher costs, cooling water requirements, and inefficient use of the geothermal resource.

Considerations in Implementation of the Decision

DOE is acutely aware of the many concerns that have been expressed about the potential environmental and institutional impacts from the Baca demonstration project. The Pueblo Indians have been expecially concerned about depletion of their water supply and interference with their religious practices. In implementing its decision DOE will use every reasonable means to avoid or minimize harm to the environmental and Indian religious practices.

The plant design incorporate various features intended to mitigate environmental impacts. The best commercially available hydrogen sulfide abatement system will be used. All cooling water makeup will be obtained from geothermal condensate thereby eliminating the need for an external water supply. All waste waters will be injected into the geothermal reservoir, minimizing the chance of contaminating fresh water supplies.

In addition, mitigation measures will be employed during both the construction and operation of the plant. These measures, along with plans for environmental monitoring, are described in Chapter 11 of the FEIS and summarized in Attachment 1. Special considerations to be taken with regard to each of the major environmental issues are summarized below.

The power plant will comply with the New Mexico ambient air quality standard for hydrogen sulfide. Although recently relaxed, this standard is still the most stringent of any in the country. Hydrogen sulfide emissions form the plant are expected to meet the standard. Precautionary measures will be taken to limit the amount of gases released to the atmosphere during well testing. The New Mexico State Health and Environment Department is responsible for enforcing the standard.

The effects of geothermal fluid withdrawals on the fresh water supplies of the Baca area are uncertain. The best available information suggests the depletion would be minor (i.e., one percent of lowest flow recorded in the Jemez River). But the information is limited. Depletion of water supplies will be offset by a reduction of water use in the Jemez River basin. Union will acquire the water rights to 34.6 acres of irrigated land at the headwaters of the Jemez River. About 14 of those acres will be withdrawn from production to counteract the expected depletion from the plant. In order to verify the depletion estimates, an intensive hydrologic monitoring program will be instituted. All major streams in the Baca area will be sampled and gaged. The All Indian Pueblo Council, an organization of Pueblo tribes, has proposed to collect data from water sources on Indian lands. If monitoring reveals a depletion of supplies greater than expected, additional irrigated lands will be withdrawn from use.

Infringement on Indian religious practices is the most difficult issue to mitigate satisfactorily. This difficulty is due mainly to the refusal by the Pueblo Indians to furnish specific information on these practices.

DOE has made an exhaustive effort to determine the potential impacts of the demonstration project on Indian religious practices. Pursuant to the Congressional Joint Resolution on American Indian Religious Freedom (Pub. L. 95–341), DOE consulted extensively with Indian tribal leaders and outside experts on Pueblo religion in order to ascertain whether the project is located on or near sacred Indian religious sites involving the conduct of specific religious practices. Comments pertaining to the infringement issue were received on the draft environmental impact statement, and comments were made by tribal leaders at a DOE-sponsored hearing conducted by the All Indian Pueblo Council.

During the preparation of the FEIS, DOE carried out additional consultations with Pueblo representatives. Despite repeated efforts, however, DOE was unable to obtain detailed information on specific religious practices and, therefore, was unable to evaluate the potential impacts of the project on the practice of religion. Several Pueblos have protested against the project, but they have not provided examples of infringements of specific religious practices on the grounds that secrecy is an important principle of the Pueblo religion.

As a result of its consultations with the Pueblo Indians, a review of property rights in the project area, and currently available information, DOE has determined that:

(1) The Pueblos do not possess property rights in the Baca sufficient to support a valid claim of infringement on any specific religious activities that occur on the Baca;

(2) There has been no showing by the Pueblos that the project will infringe their religious freedom.

However, DOE will make every effort to pursue a mitigation plan to minimize those generalized impacts that the Pueblos allege. The All Indian Pueblo Council has proposed to assist DOE in the preparation and execution of such a plan.

The Baca is a National Natural Landmark and is being considered for possible public acquisition. Various options for public ownership and management have been studied. The only one that conflicts directly with geothermal development is inclusion of the Baca as part of the national park system under the National Park Service. Since Union holds an unencumbered geothermal lease to the Baca, suitable accomodations for development would have to be negotiated between Union and the future landowners. DOE can take no direct mitigative action on this issue.

Large numbers of the Jemez Mountains salamander are present in Redondo Canyon, site of the demonstration project. Ecological surveys have shown that habitat for this New Mexico endangered species is abundant throughout the site but patchily distributed. The best way to effectively mitigate impacts on the species is to avoid the habitat. Where possible, all project facilities including transmission lines will be located so as not to disturb salamander habitat. If some habitat must be disturbed, the affected individuals will be captured alive and relocated. The New Mexico Game and Fish Department has approved these mitigation measures.

The Baca corridor, the northerly of the two transmission alternatives, has been selected for the project. This corridor has the least visual impact of any alternative anyalyzed in the FEIS. In addition, steps will be taken to reduce visibility of the transmission line from public use areas: the right-of-way will be routed through the less visible portions of the corridor; long spans will be used at road crossings; a vegetation screen will be maintained along roads and near other public use areas.

Mitigation plans will also be carried out for the following environmental issues: ecological effects from construction activities; reduction in water quality; loss of historic and archeological information; effects of noise due to construction and operation; and the consequences of accidents. Plans for dealing with these issues are listed in Attachment 1.

Conclusion

The benefits derived from the demonstration project have been balanced against the potential environmental and institutional impacts, including those allegations by certain Indian tribes of infringement on religious freedom. In addition, reasonably available project alternatives have been considered. As a result of these evaluations, DOE has decided to proceed with its participation in the project. Nevertheless, DOE is concerned about the project's potential environmental and institutional impacts and is taking reasonable measures to mitigate them.

Dated: May 5, 1980.

Ruth M . Davis,

Assistant Secretary, Resource Applications, United States Department of Energy.

Concurrence:

Dated: April 30, 1980.

Richard J. Stone,

Director, Office of Intergovernmental Affairs, Office of the Secretary of Energy.

ATTACHMENT 1.—ENVIRONMENTAL MITIGATION AND MONITORING PLANS FOR THE 50 MWe GEOTHERMAL DEMONSTRATION POWER PLANT, BACA LOCATION No. 1, NEW MEXICO (SUMMARY)

Mitigation of Construction Impacts

- Land use—Nighttime construction traffic will be avoided.
- Water quality and use—Accepted construction practices to prevent erosion will be used. Roads and drill pads will be diked. Runoff will be directed to settling ponds before discharge to streams.
- Air quality—Disturbed areas will be watered to control dust. Gaseous emission during well testing will be vented through submerged discharge tubes and well flow will be reduced after testing.
- Impacts on biota—Clearing of forest areas will be minimized. Disturbed areas will be revegetated with native species. A survey will be conducted to determine presence of rare plants immediately before construction. Areas with rare plant populations will be avoided if possible.

Identified elk herd wallows and favored feeding areas will be avoided as much as possible. Forest cover will be maintained around construction areas to screen them from elk herd use areas.

Dense Jemez Mountain salamander population areas will be avoided where possible. Where avoidance is not possible, removal and relocation of individual salamanders will be carried out by biologists.

Erosion control measures will be carried out to prevent adverse effects on aquatic biota.

- Historic and archaeologic sites—An extensive program of archaeological testing and evaluation by the University of New Mexico Office of Contract Archeaology, Department of Anthropology, will be conducted in advance of surface disturbance activities.
- Indian religious and cultural activities—The policies and procedures outlined in the report to the President by the Interagency Task Force on Indian Religious Freedom for compliance with the American Indian Religious Freedom Act (Pub. L. 93-341) have been followed. A plan to lessen perceived impacts on the Pueblo religion will be developed in cooperation with the All Indian Pueblo Council, an organization of Pueblo tribes.
- Noise impacts—Use of noisy construction equipment will be restricted to daylight hours. Muffled diesel drilling rigs will be used. Wells will be vented through submerged discharge diffusers.

Mitigation of Plant Operation Impacts

- Water quality and use—A comprehensive spill mitigation and prevention plan is on file with the State of New Mexico. This plan covers containment of spill, control of spill sources, cleanup, repair of damages, responsibilities of individuals, notification of spills, and training of personnel.

Fluids will not be withdrawn from or injected into shallow aquifers. Drilling fluids and vented fluids will be held in high freeboard pits with impermeable linings.

Depletion of Jemez River flow will be mitigated by acquisition and retirement of water rights.

- Air quality—The Stretford process will be used to remove hydrogen sulfide from the gothermal fluid.

Drift eliminators will be used on the cooling towers to reduce drift to the lowest practicable level.

- Accidents—Pipeline ruptures will be isolated by shutting back production on appropriate wells and diverting flow into reserve pits.

Blowout prevention equipment will be used on both exploration and production wells.

Mitigation of Transmission Line Impacts

- U.S. Department of Agriculture criteria for route planning, tower design, right-of-way clearing and line construction will be adhered to.
- Vegetation clearing will be held to a minimum.
- Long spans will be used at stream crossings to minimize disturbance to stream banks and reparian vegetation.
- A detailed engineering and soil stability survey of the transmission line route will be carried out to identify locations where soil conditions are unsuitable for construction. The line will be routed to avoid these areas.
- The line corridor will be surveyed for archaelogical resources before final line placement. A detailed mitigation plan submitted to the State Historic Preservation Officer will be implemented.
- Disturbed areas will be reseeded immediately after line construction.
- Line construction near elk calving areas will not occur during the calving season.
- Line will consist of wooden towers and non-specular cable to lessen visibility.
- Right-of-way will be placed to reduce visibility of line from public use areas.
- A screen of vegetation will be maintained between the line and public use areas and roads.

Preoperational Monitoring

- Terrestrial biology—Five baseline studies were completed between 1974 and 1978 and included vegetational surveys, sampling of small mammal populations by live trapping, bird transect surveys, elk pellet group transect counts, and general observation of sign and scat for larger mammals. A detailed survey of rare and endangered species was conducted.
- Aquatic biology—Preoperational monitoring of aquatic biota in Redondo Creek, Sulphur Creek, and the San Antonio River has been completed, including physical descriptions, sampling and taxonomic description of algal communities, and sampling and qualitative description of macroinvertebrate benthic communities.
- Hydrologic—Limited monitoring of discharges of Redondo Creek, Sulphur Creek, San Antonio Creek, and the East Fork of the Jemez River have been carried out during the past five years.

The commercial partners will carry out a preoperational ground water monitoring program to establish regional baseline ground water quality, water levels, and movement. Three data collections will be made per calendar year.

Additional surface and ground water monitoring will be conducted on or near Pueblo Indian lands.

- Atmospheric—Air Quality monitoring has been carried out, including sampling at 50 stations for hydrogen sulfide. Meteorological data (wind speed and direction) were collected at locations in the project area. Temperature, humidity, and precipitation at the project office site are also recorded.

[illegible]

APPENDIX A—[illegible] POWER PLANT [illegible] NEW MEXICO [illegible]

[illegible]

APPENDIX B.
NEPA AND RELATED AUTHORITIES

SECTION B.1
NATIONAL ENVIRONMENTAL POLICY ACT

Public Law 91-190
91st Congress, S. 1075
January 1, 1970

AN ACT

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969".

PURPOSE

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may —

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall —

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on —

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council —

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall —

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

Approved January 1, 1970, with Amendment Approved August 9, 1975.

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

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Approved January 1, 1970 as Amended. Approved August 9, 1975.

SECTION B.2
DOE ORDER 5440.1

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 5440.1A

10-20-80

SUBJECT: IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

---

1. PURPOSE. To establish internal Department of Energy procedures to implement the Department of Energy regulation 10 CFR 1021, for use in complying with the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321, et seq.), and Executive Order 11514 (35 FR 4247) as amended, and as supplemented by the regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508, 43 FR 55978) and the Department of Energy guidelines for compliance with the National Environmental Policy Act (45 FR 20694).

2. CANCELLATION. DOE 5440.1, IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT, 8-11-78.

3. POLICY AND OBJECTIVES. The National Environmental Policy Act establishes a broad national policy to encourage productive and enjoyable harmony between persons and their environment and to ensure that consideration is given to environmental values and factors in Federal decisionmaking. It shall be the Department of Energy's policy to comply fully with the spirit and letter of the National Environmental Policy Act and, in accordance with the statutory responsibilities under the Department of Energy Organization Act (42 U.S.C. 7112), to assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and advance goals of restoring, protecting, and enhancing environmental quality and assuring public health and safety.

4. DEFINITIONS.

   a. Program or Regulatory Office. Office (Under Secretary, Assistant Secretary, Administrator, or Director level) responsible for the decisionmaking and implementation of the Department's programmatic or regulatory action requiring a National Environmental Policy Act review.

   b. Environmental Assessment. A document prepared by the Department which assesses whether a proposed action is a "major Federal action significantly affecting the quality of the human environment," and which serves as the basis for a determination as to whether an environmental impact statement is required.

   c. Finding of No Significant Impact. A document prepared to record a Departmental decision that the environmental impacts are not significant and that an environmental impact statement is not required for a proposed action.

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Office of Environment

d. Environmental Impact Statement. A document prepared in accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act.

e. Implementation Plan. A written plan that records the results of the scoping process and outlines the procedures by which an environmental impact statement is to be prepared. The implementation plan should be prepared in accordance with the Department's guidelines (45 FR 20694), paragraph A4(e).

f. Record of Decision. A concise public record of the Department's decision on a proposed action for which an environmental impact statement was prepared which includes the alternatives considered, the environmentally preferable alternative, factors balanced in the decision, and mitigation measures and monitoring to minimize harm.

g. National Environmental Policy Act Document. An environmental assessment, an environmental impact statement, an environmental impact statement supplement, a finding of no significant impact, a notice of intent, a record of decision, or any other documentation prepared pursuant to a National Environmental Policy Act requirement.

5. RESPONSIBILITIES AND AUTHORITIES.

a. Assistant Secretary for Environment, or his or her designee, shall:

(1) Review appropriate management reports, new legislative authorities, and emerging and ongoing programs to identify Department of Energy actions which may require environmental review under the National Environmental Policy Act;

(2) Determine, after consultation with the General Counsel, whether a proposed Department of Energy program, regulatory, or legislative action requires preparation of an environmental assessment, an environmental impact statement, or requires neither an environmental assessment or an environmental impact statement;

(3) Following review of an environmental assessment and the recommendation of the program office regarding environmental impact statement preparation, determine after consultation with the General Counsel, whether or not a proposed action requires an environmental impact statement;

(4) Determine, in those cases where no one program or regulatory office has overall responsibility for the implementation of the proposed action, the responsible office(s) and means by which an environmental assessment or environmental impact statement will be prepared;

(5) Provide National Environmental Policy Act technical assistance and policy guidance to other Departmental offices in their preparation of environmental assessments and environmental impact statements;

(6) Approve task forces proposed by program or regulatory offices composed of representatives of various Departmental offices and other Government agencies to prepare environmental impact statements;

(7) Establish procedures for the review, approval, publication, and dissemination of all National Environmental Policy Act documents;

(8) Review, exercise quality control over, evaluate, and, after consultation with the General Counsel, approve or disapprove for publication all environmental assessments and draft and final environmental impact statements based on their content and conformity to Executive Order No. 11514, the Council on Environmental Quality Regulations, the Department of Energy's National Environmental Policy Act guidelines, and this Order;

(9) Approve program or regulatory office procedures established to ensure adequate consideration of environmental factors in their program, regulatory, or legislative decisionmaking;

(10) Determine, after consultation with the General Counsel and appropriate program or regulatory Department officials, whether a public hearing on the National Environmental Policy Act related aspects of a proposed action should be held;

(11) Establish procedures for the Department's review and comment on the environmental assessments and environmental impact statements of other agencies;

(12) Review and approve (for content only) records of decision;

(13) Evaluate proposed and alternative program, regulatory, or legislative actions described in Departmental environmental impact statements and make any appropriate environmental recommendations to the responsible Assistant Secretary;

(14) Evaluate alternative mitigating measures specified by responsible supervisory officials in final environmental impact statements prepared under their jurisdiction (see subparagraph 5c(10)) and make recommendations regarding the desirability and feasibility of their implementation;

(15) Advise the appropriate responsible supervisory official and, if necessary, the Secretary of proposed program, regulatory, or legislative actions believed to be not in conformance with applicable environmental laws and regulations, or Department of Energy policies;

(16) Establish and maintain the capability to enhance, revise, or replace sections of a National Environmental Policy Act document prepared by a program or regulatory office, where it is judged by the Assistant Secretary for Environment that the following conditions exist:

(a) The document has major deficiencies from the standpoint of National Environmental Policy Act sufficiency; and

(b) The program or regulatory office is unable to make the necessary alterations within the required time frame.

(17) Develop procedures for determining which Department of Energy procurements have potential environmental significance, and review all Department of Energy procurement solicitations and resulting contracts determined to have potential environmental significance; and

(18) Perform all the functions under subparagraph 5b below, through the NEPA Affairs Division.

b. NEPA Affairs Division. The Assistant Secretary for Environment shall maintain a NEPA Affairs Division. The Director of the NEPA Affairs Division is responsible for quality control and general supervision of efforts directed toward fulfilling the Department of Energy's responsibilities under the National Environmental Policy Act. He or she shall:

(1) Provide National Environmental Policy Act guidance, and planning and technical assistance to program and regulatory offices, including:

(a) Assistance in the preparation of procurement solicitations with respect to the preparation of National Environmental Policy Act documents;

(b) Assistance in the development of environmental criteria (stipulative and evaluative) and evaluation of proposals against such criteria for procurements with potential environmental significance;

(c) Assistance in the preparation of outlines for environmental impact statements and schedules for environmental impact statement preparation;

(d) Review and comment on all interim, draft, and final National Environmental Policy Act documents;

(e) Coordinating and expediting the signoff and distribution process for National Environmental Policy Act documents;

(f) Holding of public hearings regarding National Environmental Policy Act matters; and

(g) Assistance in the response to external comments on draft environmental impact statements.

(2) Review, exercise quality control over, and recommend approval or disapproval of all National Environmental Policy Act documents to the Assistant Secretary for Environment;

(3) Prepare policy and legislative environmental assessments and environmental impact statements dealing with a proposal significantly affecting more than one program or regulatory office in consultation with those affected offices;

(4) Develop National Environmental Policy Act policies and internal directives;

(5) Track environmental impacts and issues relating to actions subject to National Environmental Policy Act review, and assure the implementation of practical substantive environmental mitigating measures into Department of Energy programs;

(6) Coordinate assistance to other agencies in their National Environmental Policy Act processes from the period beginning prior to the preparation of a draft environmental impact statement by the other agency through submission of comments on final environmental impact statements from other agencies;

(7) Coordinate all consultation with the Council on Environmental Quality on matters pertaining to the National Environmental Policy Act;

(8) Review and approve implementation plans for the preparation of environmental impact statements on Department of Energy program, regulatory, or legislative actions;

(9) Recommend to the Assistant Secretary for Environment:

(a) Whether a proposed Departmental action requires an environmental assessment;

(b) Whether an environmental assessment is adequate;

(c) Whether a proposed Departmental action requires an environmental impact statement; and

(d) Whether an environmental impact statement is adequate and should be approved for publication.

(10) Recommend to the Assistant Secretary for Environment whether a public hearing should be held on the National Environmental Policy Act aspects of a proposed action;

(11) Evaluate proposed and alternate Departmental actions as set forth in environmental impact statements and make appropriate environmental recommendations to the Assistant Secretary for Environment;

(12) Alert the Assistant Secretary for Environment of any Departmental action believed to be not in conformance with applicable environmental laws, regulations, or National or Department of Energy environmental policies; and

(13) Fulfill his or her responsibilities, in part, through the assignment of National Environmental Policy Act coordination officers to work closely with designated program or regulatory personnel throughout all phases of their environmental assessment or environmental impact statement preparation effort.

c. Responsible Supervisory Officials. The Deputy Secretary, Under Secretary, Assistant Secretaries, Administrators, and Directors, or their designees, are responsible for preparing and defending environmental impact statements or environmental assessments on programs, projects, or regulatory actions under their jurisdiction. As part of this responsibility, they shall:

(1) Notify the Director of the NEPA Affairs Division at the earliest possible time in their planning process of actions under consideration that may potentially have a significant effect upon the quality of human environment;

(2) Designate and supervise officials responsible for preparing environmental assessments and environmental impact statements;

(3) Prepare at the earliest practicable time, and review environmental assessments on proposed actions under their jurisdiction for which it is unclear whether an environmental impact statement is required;

(4) Prepare implementation plans as defined in subparagraph 4e;

(5) Prepare at the earliest practicable time, and review draft and final environmental impact statements on proposed actions under their jurisdiction having significant environmental impacts;

(6) Arrange, as appropriate, for the holding of public hearings concerning the National Environmental Policy Act related aspects of a proposed action under their jurisdiction;

(7) Propose and establish, where appropriate, task forces composed of of representatives of the Department of Energy and other Government agencies to prepare environmental impact statements;

(8) Establish identifiable procedures and records within their respective organizations to ensure that environmental factors are adequately considered along with other program considerations in the decisionmaking process;

(9) Specify in final environmental impact statements which environmental mitigating measures they are committed to implement in connection with the proposed action, which will be studied further, which are outside the authority of the Federal Government to implement, and which will not be implemented;

(10) Monitor and prepare, where appropriate, periodic reports on the status of post-final environmental impact statement program or project implementation, particularly with respect to any environmental mitigating measures included in the program or project;

(11) Establish procedures and take steps to ensure that the National Environmental Policy Act coordination officers designated in subparagraph 5B(13) are fully informed in a timely manner of all program considerations and changes that would bear on the accuracy and objectivity of the National Environmental Policy Act documents prepared under that program;

(12) Incorporate, where appropriate, environmental criteria (stipulative and evaluative) into procurement solicitations and environmental conditions into resulting contracts issued under this jurisdiction.

d. General Counsel shall:

(1) Consult with the Assistant Secretary for Environment as to whether a proposed action requires an environmental assessment, an environmental impact statement, or neither;

(2) Consult with the Assistant Secretary for Environment regarding the legal adequacy of all Departmental National Environmental Policy Act documents;

(3) Consult with the Assistant Secretary for Environment as to whether a public hearing concerning the National Environmental Policy Act related aspects of a proposed action should be held; and

(4) Provide legal assistance to all Departmental organizations in the preparation of National Environmental Policy Act documents and the conduct of National Environmental Policy Act related hearings.

e. The Director of Administrative Services shall maintain a list available for public inspection of all draft and final environmental impact statements, environmental assessments, and findings of no significant impact in the Department of Energy Public Reading Room and shall arrange for making such National Environmental Policy Act documents available for inspection in accordance with the provisions of the Freedom of Information Act (5 U.S.C. Section 552).

f. The Secretary shall:

(1) Review final environmental impact statements on those Departmental actions where final decisionmaking authority has not been redelegated;

(2) Settle disputes that arise regarding issues related to the issuance of National Environmental Policy Act documents that are unresolvable at the program or regulatory office levels.

William S. Heffelfinger
Director of Administration

☆ U.S. GOVERNMENT PRINTING OFFICE : 1980 - 341-777/236

SECTION B.3
CEQ REGULATIONS

Council on Environmental Quality
Executive Office of the President

REGULATIONS

For Implementing The Procedural Provisions Of The

NATIONAL ENVIRONMENTAL POLICY ACT

Reprint
43 FR 55978–56007
November 29, 1978
40 CFR Parts 1500–1508

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For further information, contact:

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PART 1500—PURPOSE, POLICY, AND MANDATE

1500.1 Purpose.
1500.2 Policy.
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1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970 as amended by Executive Order 11991, May 24, 1977).

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500-1508 of this Title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to Sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.
1501.1 Purpose.
1501.2 Apply NEPA early in the process.

Sec.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24 1977).

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review

(§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.
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1502.22 Incomplete or Unavailable Information.
1502.23 Cost-Benefit Analysis.
1502.24 Methodology and Scientific Accuracy.
1502.25 Environmental Review and Consultation Requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report

On proposals (§ 1508.23)
For legislation and (§ 1508.17)
Other major Federal actions (§ 1508.18)
Significantly (§ 1508.27)
Affecting (§§ 1508.3, 1508.8)
The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in

the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of Contents.

(d) Purpose of and Need for Action.

(e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected Environment.

(g) Environmental Consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).

(h) List of Preparers.

(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11-1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.
1503.1 Inviting Comments.
1503.2 Duty to Comment.
1503.3 Specificity of Comments.
1503.4 Response to Comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdic-

tion by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do

not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.
1504.2 Criteria for Referral.
1504.3 Procedure for Referrals and Response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) below.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of

agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.
1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (*e.g.* long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this subparagraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor.* An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C.

1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10 below.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under sec. 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reason of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency Capability to Comply.
1507.3 Agency Procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Sec. 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Sec. 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to Sec. 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of Sec. 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.
1508.1 Terminology.
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1508.4 Categorical Exclusion.
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1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental Assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human Environment.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction By Law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead Agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when

viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

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*Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, and Pub. L. 94-83, August 9, 1975.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(d) Any detailed statement required under subparagraph (c) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(i) Assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range; urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) Consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) Utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the sup-

port of international exchange programs in the United States and in foreign countries.

SEC. 209. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970*

TITLE II—ENVIRONMENTAL QUALITY (OF THE WATER QUALITY IMPROVEMENT ACT OF 1974)

SHORT TITLE

Sec. 201. This title may be cited as the "Environmental Quality Improvement Act of 1970."

FINDINGS, DECLARATIONS, AND PURPOSES

Sec. 202. (a) The Congress finds—

(1) That man has caused changes in the environment;

(2) That many of these changes may affect the relationship between man and his environment; and

(3) That population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this title are—

(1) To assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) To authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91–190.

OFFICE OF ENVIRONMENTAL QUALITY

Sec. 203. (a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this title referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91–190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Bureau of the Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this title and Public Law 91–190, except that he may employ no more than 10 specialists and other experts without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS–18 of the General Schedule under section 5330 of title 5.

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*Pub. L. 91–224, 42 U.S.C. 4371–4374, April 3, 1970.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) Providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91–190;

(2) Assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) Reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) Promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) Assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) Assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) Collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to sections 3618 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) in carrying out his functions.

REPORT

SEC. 204. Each Environmental Quality Report required by Public Law 91–190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

AUTHORIZATION

SEC. 205. There are hereby authorized to be appropriated not to exceed $500,000 for the fiscal year ending June 30, 1970, not to exceed $750,000 for the fiscal year ending June 30, 1971, not to exceed $1,250,000 for the fiscal year ending June 30, 1972, and not to exceed $1,500,000 for the fiscal year ending June 30, 1973. These authorizations are in addition to those contained in Public Law 91–190.

Approved April 3, 1970.

THE CLEAN AIR ACT § 309*

§ 7609. Policy review

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

***July 14, 1955, c. 360, § 309, as added Dec. 31, 1970, Pub. L. 91-604 § 12(a), 42 U.S.C. § 7609 (1970).**

Executive Order 11514. March 5, 1970

PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

As amended by Executive Order 11991. (Secs. 2(g) and (3(h)). May 24, 1977*

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

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*The Preamble to Executive Order 11991 is as follows:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 *et seq.*), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilites under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Sec. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and

Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) by deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190)".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

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SECTION B.4
DOE NEPA
GUIDELINES

federal register

Friday
March 28, 1980

Part V

Department of Energy

Compliance With the National Environmental Policy Act

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act; Final Guidelines

AGENCY: Department of Energy.

ACTION: Final guidelines for compliance with the National Environmental Policy Act.

SUMMARY: The Department of Energy (DOE) hereby adopts final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508). The guidelines published herein reflect certain revisions to the proposed guidelines, published in the **Federal Register** on July 18, 1979 (44 FR 42136), based upon DOE's consideration of comments and upon experience under the CEQ regulations and the proposed guidelines.

The guidelines are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

EFFECTIVE DATE: March 28, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-4600.

Stephen H. Greenleigh, Esq., Assistant, General Counsel for Environment, Room 6D-033, Forrestal Building, Washington, D.C. 20585 (202) 252-6947.

SUPPLEMENTARY INFORMATION:

I. Background

The final guidelines published herein provide the supplemental implementing procedures required by the CEQ regulations. DOE published proposed guidelines in the Federal Register on July 18, 1979 (44 FR 42136), and established August 20, 1979, as the close of the public comment period. DOE has operated under the proposed guidelines since the time of publication.

On August 6, 1979, DOE announced in the Federal Register (44 FR 45918) the establishment of Part 1021 of Chapter X of Title 10 of the Code of Federal Regulations. That rulemaking provided for DOE adoption of the CEQ regulations and the revocation of the NEPA regulations of predecessor agencies of DOE. The effective date of the rulemaking was July 30, 1979.

II. Comments Received and DOE Response

Written comments were received from the Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation (ACHP), and four private organizations. DOE has carefully considered all comments received and has modified the proposed guidelines, as appropriate, to assure that the final guidelines represent sound NEPA procedures.

A. EPA Comments

The EPA suggested that DOE promulgate its procedures as regulations rather than guidelines to give the procedures greater legal authority. DOE considered issuing regulations but decided, instead, to issue guidelines. This decision was based on the advice of CEQ staff and on the belief that guidelines would ensure flexibility.

The EPA also suggested adding sections to the guidelines to provide for monitoring mitigation measures and for the filing of EIS's. DOE considered these suggestions but concluded that the CEQ regulations adequately establish the requirements for monitoring mitigation measures (40 CFR 1505.2(c)) and for filing DIS's (40 CFR 1506.9).

B. ACHP Comment

The ACHP suggested adding a section to the guidelines which would detail the manner in which DOE's National Historic Presevation Act (NHPA) responsibilities will be coordinated with its NEPA responsibilities. DOE recognizes the benefits of coordinating the requirements of other environmental statutes such as the NHPA with those of NEPA, and has supplemented the CEQ requirements contained at 40 CFR 1502.25 by adding general procedures under Paragraph C.4 for coordination with environmental review requirements of other environmental statutes. DOE believes that these general procedures, in conjunction with the ACHP's regulations, 36 CFR 800, will facilitate the coordination of NEPA and NHPA requirements.

C. Other Comments

1. *Section A—NEPA and Agency Planning.* Paragraphs 1.(c)(4) and (5) of the proposed guidelines indicated that DOE expects applicants to notify DOE of other governmental actions required for project completion and of parties interested in the proposed undertaking. One commenter asserted that DOE should have the responsibility for such activities. The purpose of these paragraphs was to provide guidance to applicants for cases where actions are planned before DOE actually receives an application. In such cases, applicants, and generally not DOE, have the information necessary to determine the applicability of other environmental requirements and to identify interested parties. These efforts by applicants early in their planning process will facilitate coordination and thereby help avoid duplication and delays. Accordingly, and with the exception of some minor format changes, DOE has not changed its advice to applicants.

The same commenter suggested that the role of an applicant who is required to file a Fuels Decision Report under the Fuel Use Act (FUA) should be specified in the NEPA Guidelines. DOE published guidelines in the Federal Register on November 5, 1979 (44 FR 63740), for the preparation of the environmental analysis chapter of a Fuels Decision Report. The role of a FUA applicant is specifically outlined by the FUA guidelines and the NEPA guidelines.

The same commenter also asserted the necessity of establishing specified time frames for the NEPA process. DOE recognizes the benefits of setting time limits for the NEPA process and has repeated for emphasis the CEQ regulations contained at 40 CFR 1501.8 by adding a requirement under applicant processes which provides that DOE establish time limits for the NEPA process when requested to do so by an applicant.

2. *Section B—NEPA and Agency Decisionmaking.* Paragraph 1(b)(2)(i) of the proposed guidelines established factors that DOE would consider in determining the necessity and appropriate timing of a NEPA document for energy technology research, development, demonstration, and commercialization programs. One commenter was concerned that the factors did not include the likelihood that the technology will prove to be commercially feasible. DOE believes that this factor is reflected in the broader factor already in the guidelines which reads "The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implemeniation likely to determine subsequent development or restrict later alternatives."

3. *Section C—Other Requirements of NEPA.* One commenter requested that future revisions to the guidelines be published in the Federal Register for comment. DOE agrees that substantive changes to the guidelines should be published for comment and has added appropriate requirements under Paragraph C.8.

4. *Section D—Typical Classes of Action.* One commenter questioned the application of NEPA to DOE's action on an exemption petition for a combustion turbine under the Fuel Use Act (FUA), on the basis that the issuance of permits under the Clean Air Act is exempted in section 7(c)(1) of the Energy Supply and Environmental Coordination Act from NEPA. That exemption from NEPA applies only to actions taken under authority of the Clean Air Act and not to actions taken by other agencies under such other authorities as FUA.

Other commenters also questioned the application of NEPA to action on an exemption petition for a peakload powerplant, on the grounds that the exemption is non-discretionary and suggested the need for categorizing FUA exemption actions in Section D of the DOE NEPA guidelines. DOE is assessing the general applicability of NEPA to specific FUA exemptions, as well as the need for categorizing, FUA exemption actions in Section D. Appropriate public notice and opportunity for comment will be provided on these matters as DOE gains additional experience with FUA implementation and before DOE adoption of additional categorizations in Section D for FUA exemptions.

D. Comments Beyond Scope

One set of comments was received that is beyond the scope of the guidelines. The comments included:

(1) DOE should place energy above the environment in assessing planned departmental actions.

(2) DOE's policy should include requiring substantiation and objective documentation of any EPA study which would potentially affect energy supplies.

III. Other Revisions to the Guidelines

In addition to revisions made in response to comments, DOE has also revised the guidelines as a result of experience under the CEQ regulations and DOE's proposed guidelines.

A. Format, Wording and Paragraph Arrangement

Several minor changes were made to improve continuity and clarity and to facilitate referencing specific sections of the guidelines.

B. Section A—NEPA and Agency Planning

Paragraph A.4. (d) was added to establish an adequate notice period with respect to scoping meetings.

C. Section B—NEPA and Agency Decisionmaking

Under project level decisionmaking, DOE has added Paragraph B.3. (c)(2) to provide for major system acquisition projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. Accordingly, DOE has established, pursuant to the provisions of 40 CFR 1507.3(b), special procedures to provide for compliance with NEPA to the fullest extent possible. The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment, the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

Upon publication, DOE will operate under the special procedures on an interim basis. However, because these procedues represent a substatnive revision to the previously proposed guidelines, DOE affirmatively solicits pubic comments on them and will make appropriate modifications before final adoption of Paragraph B.3. (c)(2). Interested persons are invited to submit written comments with respect to these procedures to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-064, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. To ensure consideration, comments should be received by DOE no later than 30 days after publication of the special procedures in the Federal Register.

D. Section D—Typical Classes of Action

Two minor changes, both involving rate increases, have been made in this section. The addition of rate increases exceeding the rate of inflation as a typical class of action normally requiring an EA and generally applicable to all of DOE is the logical counterpart to the categorical exclusion for rate increases not exceeding the rate of inflation. Since this addition is applicable to all of DOE, the rate increase typical class of action for Power Marketing Administrations has been deleted.

Issued in Washington, D.C., March 25, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

DOE NEPA GUIDELINES

Section A—NEPA and Agency Planning

Paragraph A.1 DOE Process [40 CFR 1501.2].
Paragraph A.2 Applicant Processes [40 CFR 1501.2(d)].
Paragraph A.3 Whether to Prepare an Environmental Impact Statement [40 CFR 1501.4, 1507.3(b)(2), and 1508.4].
Paragraph A.4 Scoping [40 CFR 1501.7].

Section B—NEPA and Agency Decisionmaking

Paragraph B.1 DOE Decisionmaking [40 CFR 1505.1].
Paragraph B.2 General Procedures.
Paragraph B.3 Specific Procedures.

Section C—Other Requirements of NEPA

Paragraph C.1 Access to NEPA Documents [40 CFR 1507.3(c)].
Paragraph C.2 Supplemental Statements [40 CFR 1502.9(c)].
Paragraph C.3 Revisions of Time Periods [40 CFR 1507.3(d)].
Paragraph C.4 Coordination With Other Environmental Laws [40 CFR 1502.25].
Paragraph C.5 Status of NEPA Actions [40 CFR 1506.6(e)].
Paragraph C.6 Oversight of Agency NEPA Activities [40 CFR 1507.2(a)].
Paragraph C.7 Compliance.
Paragraph C.8 Revisions to the Guidelines.

Section D—Typical Classes of Action

DOE NEPA Guidelines

Purpose

The purpose of these guidelines is to provide procedures which the Department of Energy (DOE) will apply to implement the Council on Environmental Quality (CEQ) regulations for compliance with the National Environmental Policy Act (NEPA). The CEQ regulations are codified at 40 CFR Parts 1500–1508. The guidelines are issued pursuant to and are to be used only in conjunction with the CEQ regulations.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

Section A—NEPA and Agency Planning

1. *DOE Process.* The CEQ regulations (40 CFR 1501.2) require that:

> Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays

> later in the process, and to head off potential conflicts.

To implement this requirement DOE will:

(a) Review preliminary internal program planning documents, regulatory agenda, draft legislation, budgetary materials and other developing DOE proposals, to ensure the proper integration of the NEPA process;

(b) Incorporate into its early planning processes a careful consideration of: (i) the potential environmental consequences of its proposed actions, and (ii) appropriate alternative courses of action;

(c) At the earliest possible time, in accordance with paragraph A.3 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

2. *Applicant Processes.* With respect to applicant processes, the CEQ regulations (40 CFR 1501.2(d)) require agencies to:

> (d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:
>
> (1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
>
> (2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.
>
> (3) The Federal agency commences its NEPA process at the earliest possible time.

To implement this requirement:

(a) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action are expected to:

(1) Consult with DOE as early as possible in their planning processes to obtain guidance with respect to the appropriate level and scope of any studies or environmental information which DOE may require to be submitted as part of or in support of their application;

(2) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the quality of the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during the preliminary planning stages of the proposed action to ensure that environmental factors including permitting requirements are identified;

(4) Submit applications for all required Federal, regional, State and local permits or approvals as early as possible;

(5) Notify DOE as early as possible of other Federal, regional, State, local and Indian tribe actions required for project completion in order that DOE may coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2, regarding elimination of duplication with State and local procedures, as appropriate;

(6) Notify DOE of private persons and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

(7) Notify DOE if, prior to completion of the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction which may meet either of the criteria set forth at 40 CFR 1506.1(a).

(b) Upon receipt of an application, or earlier if possible, DOE will:

(1) Initiate and coordinate any requisite environmental analyses in accordance with the requirements set forth at 40 CFR 1506.5;

(2) Determine, in accordance with paragraph A.3 herein, whether an EA or an EIS is required; and

(3) Establish time limits for the NEPA Process when requested to do so by an applicant.

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) For DOE programs that frequently involve another agency or agencies in related decisions subject to NEPA, DOE will cooperate with the other agencies in developing environmental information and in determining whether to prepare an EA or an EIS. Where appropriate and acceptable to the other agencies, DOE will develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

3. *Whether to Prepare an Environmental Impact Statement.* The CEQ regulations (40 CFR 1501.4) require the Federal agency, in determining whether to prepare an EIS, to:

> (a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:
>
> (1) Normally requires an environmental impact statement, or
>
> (2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).
>
> (b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9).

To implement this requirement and the requirements contained at 40 CFR 1507.3(b)(2):

(a) DOE has (in Section D), identified typical classes of DOE action:

"(i) Which normally do require environmental impact statements.

"(ii) Which normally do not require either an environmental impact statement or an environmental assessment [categorical exclusions (§ 1508.4)].

"(iii) Which normally require environmental assessments but not necessarily environmental impact statements."

(b) DOE will review individual proposed actions to determine the appropriate level of NEPA documentation required where:

(1) The proposed action is not encompassed within the categories of Section D,

(2) The proposed action is encompassed within the categories of Section D, but DOE believes that the categorization is not appropriate to the individual proposed action.

(3) Public comment received on or relating to a proposal included within the categories of Section D raises a substantial question regarding the categorization.

(c) DOE will, in conducting the reviews of paragraph (b) above, either:

(1) Determine that neither an EA nor an EIS is required where it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. (In such cases, a brief memorandum may be prepared explaining the basis for that determination);

(2) Prepare an EA where it is unclear whether an EIS is required; or

(3) Proceed directly to EIS preparation where it is clear that an EIS is required.

(d) DOE may add actions to or remove actions from the categories in Section D based on experience gained during implementation of the CEQ regulations and these guidelines.

4. *Scoping.* The CEQ regulations (40 CFR 1501.7) require:

> An early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.

To implement this requirement, DOE will:

(a) As soon as practicable after a decision to prepare an EIS, publish in the Federal Register a Notice of Intent (NOI) to prepare an EIS in accordance with 40 CFR 1501.7. However, where

DOE finds that there is a lengthy period between DOE's decision to prepare an EIS and the time of actual preparation, DOE may instead publish the NOI at a time sufficiently in advance of preparation of the draft EIS to provide reasonable opportunity for interested persons to participate in the EIS preparation process;

(b) Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6;

(c) Through the NOI, invite comments and suggestions on the proposed scope of the EIS including environmental issues and alternatives for consideration in the preparation of the draft EIS and invite public participation in the NEPA process except where there is an exception for classified proposals pursuant to 40 CFR 1507.3(c) and paragraph C.1, herein. The comment period for the NOI will normally be 20 days. To the extent practicable, DOE may consider comments received after the close of the designated comment period on the NOI in preparing the draft EIS.

(d) If a scoping meeting is to be held, provide notice of the meeting in the NOI at least 15 days before the meeting.

(e) Prepare and use an EIS implementation plan to record the results of the scoping process and to provide guidance to DOE for the preparation of an EIS.

(1) The EIS implementation plan will be a brief document and will contain:

(i) Information to address the provisions of 40 CFR 1501.7(a)(2), (3), (5), (6), and (7);

(ii) A detailed outline of the EIS;

(iii) A description of the means by which the EIS will be prepared, including the nature of any contractor assistance to be used.

(2) The EIS implementation plan may also contain:

(i) Target page limits for the EIS;

(ii) Target time limits for EIS preparation;

(iii) An allocation of assignments among DOE and cooperating agencies.

(3) DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later.

(4) DOE may revise the implentation plan, as necessary during EIS preparation.

Section B—NEPA and Agency Decisionmaking

1. *DOE Decisionmaking.* The CEQ NEPA regulations (40 CFR 1505.1) require that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA.

To implement this CEQ requirement, this section designates the major decisonmaking processes for DOE's principal programs and provides procedures to assure that the NEPA process corresponds with the decisionmaking processes. These processes are designated as policy level decisionmaking, program level decisionmaking, and project level decisionmaking. The procedures consist of general procedures applicable to all DOE decisionmaking processes followed by specific procedures applicable to the individual decisionmaking processes.

The decisionmaking structure designated herein in consistent with the CEQ tiering concept (40 CFR 1502.20), which provides for focusing on the actual issues ripe for decision and eliminating repetitive discussions of the issues already decided. Accordingly, environmental documents prepared for policy level decisions will normally focus on broad issues and will provide the foundation for subsequent program and project environmental documents. Environmental documents prepared for program level decisions will normally focus on narrower issues than at the policy level and may summarize and incorporate by reference discussions contained in any relevant policy level environmental document but should not repeat the discussion of issues already decided at the policy level of decisionmaking. Similary, environmental documents propared for project level decisions will normally focus on issues specific to the proposed project and may summarize and incorporate by reference discussions contained in any broader environmental documents but should not repeat the discussion of issues decided at higher levels of decisionmaking.

(2) *General Procedures.*

(a) The following general procedures apply to all DOE decisionmaking processes. DOE will:

(1) At the earliest possible time in the decisionmaking process: (i) identify and evaluate environmental factors and appropriate alternative courses of action, and (ii) determine in accordance with paragraph A.3 herein the appropriate level of enviromental review document required.

(2) Commence preparation of the relevant environmental document as close as possible to the time that DOE begins development of or is presented with a proposal (40 CFR 1508.23), and complete the document in advance of final decisonmaking.

(3) During the development and consideration of a proposal and the relevant environmental document, review other DOE planning and decisionmaking documents to ensure that alternatives (including the proposed action) to be considered by the decisionmaker are encompassed by the range of alternatives in the relevant environmental document.

(4) Circulate the relevant environmental document or summary thereof with the proposal and other decisionmaking documents through DOE's internal review processes to ensure that DOE officials use the environmental documents in making decisions and that the decisionmaker consider the alternatives described therein.

(5) Where an EIS is prepared, publish the record of decision (40 CFR 1505.2) in the **Federal Register** and make it available to the public as specified in 40 CFR 1506.6 except as provided in paragraph C.1. For the purposes of 40 CFR 1506.1, the record of decision will be deemed issued upon signature by the appropriate DOE official.

(6) Utilize the tiering concept in accordance with 40 CFR 1502.20 and 1508.28 to the fullest extent practicable.

3. *Specific Procedures.*

(a) *Policy level decisionmaking.* At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals such as conservation, development of new resources and use of more abundant resources. Policy level decisions may, for example, be representated by proposals for legislation or by formal statements of national energy policy.

(1) For legislative proposals, DOE will: identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document during the proposal formulation and early drafting stages; and, normally prepare, consider, and publish any required environmental document in connection with the submittal of a proposal to Congress, except as may be provided in 40 CFR 1506.8.

(2) For formal statements of national energy policy DOE will: initiate implementation of the applicable general procedures specified above during the analysis phase of policy development; and will prepare, consider, and publish any required environmental document in advance of policy adoption for those policies that will result in or substantially alter DOE programs.

(b) *Program level decisionmaking.* At this level of decisionmaking, DOE is deciding on a variety of approaches to implement specific policies or statutory authorities. Program level decisions are generally represented by the advancement of an energy technology program, the issuance of program regulations, or the adoption of a program plan.

(1) For energy technology research, development, demonstration and commercialization programs, DOE will: Initiate the applicable general procedures specified above concurrent with program initiation; and, if required, prepare the relevant environmental document when environmental effects can be meaningfully evaluated. When required, the relevant environmental document would normally be prepared in advance of a decision to proceed with the development phase of a research, development, demonstration, and commercialization program. Nevertheless, DOE will consider the following factors throughout the program in determining the necessity and appropriate timing of the relevant environmental document: (i) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment; and (ii) The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures specified above during early regulation drafting stages. Publication of a draft EIS, if required, will normally accompany publication of the proposed regulations and will be available for public comment at any hearings held on the proposed regulations. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking intended to gather information during early stages of regulation development. The relevant environmental document, with comments and responses, will be included in the administrative record. In accordance with 40 CFR 1506.10.(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

(3) For programs that are not included in paragraphs (1) and (2) and that are implemented by a formal program plan, DOE will: initiate implementation of the applicable general procedures specified above concurrent with program plan formulation; and, if required, prepare the relevant environmental document when the environmental effects of the program can be meaningfully evaluated. If an EIS is required, it will be prepared, considered, and published and the requisite record of decision issued before taking an action that would have an adverse environmental impact or limit the choice of reasonable alternatives except as provided in 40 CFR 1506.1(c).

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval of projects, by the approval or disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) For projects that are undertaken directly by DOE, including projects involving the sole source procurement of a site and/or process, DOE will: initiate implementation of the applicable general procedures specified above concurrent with project concept development; and, if required, prepare, consider, and publish the relevant environmental document before making a go/no-go decision on the project. In addition, if a DOE project requires preparation of an EIS, DOE will not take an action concerning the project which would have an adverse environmental effect or which would limit the choice of reasonable alternatives until the required record of decision is issued.

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to that reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential, or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the Environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly-available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500–1508 and in advance of a go/no-go decision.

(3) For projects that involve applications to DOE for financial

assistance or applications to DOE for a permit, license, exemption, allocation or similar regulatory action involving informal administrative proceedings, DOE will: apply NEPA early in the process in accordance with 40 CFR 1501.2(d) and paragraph A.2 herein; commence preparation of the relevant environmental document, if required, no later than immediately after applications are received and in accordance with the requirements set forth at 40 CFR 1506.5; and consider the relevant environmental document, if one is prepared, in decisions on the application.

(4) For actions that involve adjudicatory proceedings, excluding judicial or administrative, civil, or criminal enforcement actions, DOE will: normally prepare, consider and publish the relevant environmental document, if required, in advance of a decision, and include the document in the formal record of the proceedings. If an EIS is required, the draft EIS will normally precede preliminary staff recommendations, and publication of the final EIS will normally precede final staff recommendations and that portion of the public hearing related to the EIS. The EIS need not precede preliminary hearings designed to gather information for use in the EIS.

Section C—Other Requirements of NEPA

1. *Access to NEPA Documents.* The CEQ NEPA regulations (40 CFR 1507.3(c)) allow an agency to develop criteria for limiting public access to environmental documents which involve classified information. This section provides the DOE policy for addressing classified information as well as policy for addressing confidential information.

Classified or confidential information is exempted from mandatory public disclosure by § 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552), § 1004.10(b) of DOE's regulations implementing FOIA (10 CFR Part 1004), and 18 U.S.C. 1905. Public access to such information will be restricted in accordance with such regulations and applicable statutes.

All NEPA documents (as defined at 40 CFR 1508.10), the EIS implementation plan, and the record of decision are subject to the mandatory public disclosure requirements of FOIA and the DOE regulations implementing FOIA except documents which are determined, in accordance with the applicable statutes and regulations, to contain classified or confidential information. DOE will determine the treatment of documents containing classified or confidential information on a case by case basis in accordance with the requirements of DOE's FOIA regulations and the applicable statutes.

Wherever possible, the fundmental policy of full disclosure of NEPA documents will be followed. In some cases, this will mean that classified or confidential information may be excised, prepared as an appendix, or otherwise segregated to allow the release of the nonsensitive portions of a document.

2. *Supplemental Statements.* (a) If required, DOE will prepare, circulate, and file a supplement to a draft or final EIS, in accordance with 40 CFR 1502.9(c). However, where it is unclear whether an EIS supplement is required, DOE will prepare an analysis which provides sufficient information to support a DOE determination with respect to the criteria of 40 CFR 1502.9(c) (i) and (ii). Based on the analysis, DOE will determine whether to prepare an EIS supplement. Where DOE determines that an EIS supplement is not required, DOE will prepare a brief memorandum which explains the basis for that determination.

(b) When applicable, DOE will incorporate an EIS supplement or a brief memorandum and supporting analysis into any related formal administrative record prior to making a final decision on the action which is the subject of the EIS supplement or analysis.

3. *Revisions of Time Periods.* The CEQ regulations (40 CFR 1507.3(d)), allow agencies to provide for periods of time other than those presented in 40 CFR 1506.10 when necessary to comply with other specific statutory requirements.

Certain circumstances, such as statutory deadlines, may require that the periods established in 40 CFR 1506.10 for the timing of DOE NEPA actions be altered. If DOE determines that, in order to comply with specific requirements of other statutes, such revisions are necessary, a notice of the determination will be published in the Federal Register. This notice will briefly provide the reason for such alterations and contain information on the revised time periods. Related notices of substantive action, if applicable, may be published jointly with notices published pursuant to this paragraph.

4. *Coordination With Other Environmental Laws.* The CEQ regulations (40 CFR 1502.25) provide for integrating the NEPA process and other environmental requirements.

To the fullest extent possible, DOE will:

(a) Coordinate NEPA compliance with other evnironmental review requirements including those under: the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Wild and Scenic Rivers Act, the National Historic Preservation Act, Section 13 of the Federal Nonnuclear Research and Development Act, the Marine Protection, Research and Sanctuaries Act, the Resource Conservation and Recovery Act, and other Acts, as deemed appropriate by DOE.

(b) Determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays.

(c) In addition to the information required by 40 CFR 1502.25(b), include in draft and final EIS's plans and estimated schedules for compliance with other applicable environmental review requirements.

(d) Use the relevant NEPA document to support the fulfillment of the review and documentation requirements of other environmental statutes and regulations, and to report the status of compliance with these other environmental authorities.

5. *Status of NEPA Actions.* Individuals or organizations desiring information or status reports on elements of the NEPA process should address their inquiries to:

NEPA Affairs Division, Office of Environment, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

6. *Oversight of Agency NEPA Activities.* The Assistant Secretary for Environment, or his/her designee, will be responsible for overall review of DOE NEPA compliance.

7. *Compliance.* These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

8. *Revisions to the Guidelines.* DOE will, in accordance with 40 CFR 1507.3, review these guidelines on a continuing basis and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA. Substantive changes will be published in the Federal Register and will be finally adopted only after an opportunity for public review.

Section D.—*Typical Classes of Action*

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
	Classes of Actions Generally Applicable to All of DOE	
Administrative procurements (e.g., general supplies)	DOE actions which enable or result in engineering development activities, i.e., detailed design, development and test of energy system prototypes.	DOE actions which are expected to result in the construction and operation of a full-scale energy system project.
Contracts for personal services	DOE actions which provide grants to state or local governments for energy conservation programs.	DOE actions which promote energy conservation through regulation of energy use on a substantial scale.
Personnel actions		
Reports or recommendations on legislation or proposed rulemaking which was not initiated by DOE.		
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.		
Interpretations and rulings, or modification or rescissions thereof.		
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.		
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.		
Information gathering, analysis, and dissemination		
Actions in the nature of conceptual design or feasibility studies.		
Actions involving routine maintenance of DOE-owned or operated facilities.		
Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposal.		
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued pursuant to the Emergency Petroleum Allocation Act, as amended.		
Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities, which do not exceed the rate of inflation in the period since the last rate increase.	Rate increases for provide products or services marketed by DOE and approval of rate increases for non-DOE entities which exceed the rate of inflation in the period since the last increase.	
Actions that are substantially the same as other actions for which the environmental actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.		
	Classes of Actions Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act	
	Approval/disapproval of a new license or an amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in LNG throughput, change in transportation or storage operations.	Approval/disapproval of applications involving the construction of new liquid natural gas terminal, regasification or storage facilities or a significant expansion of an existing LNG terminal, regasification or storage facility.
		Approval/disapproval of an application involving a significant operational change, such as a major increase in the quantity of LNG imported or exported.
	Classes of Actions Applicable to Propane Allocation Program	
Assignments and allocations of propane to retail and wholesale outlets for commercial and residential use.	Assignments and allocations of propane to gas utilities for peak shaving, Btu enrichment or supplemental gas supplies involving new construction or a substantial change in operations or potential impact on competing users of propane.	
Assignments and allocations of propane to gas utilities for peak shaving or Btu enrichment which do not involve new construction or a substantial change in operation and where DOE has determined that such actions will not impact the supplies available for competing uses.	New assignments and allocations of propane feedstock to enable operation of or increases in operation of petrochemical plants.	
	Changes in regulatory status such as the decontrol of propane.	
	Classes of Actions Applicable to Synthetic Natural Gas (SNG) Feedstock Allocation Program	
Approval/disapproval of an application for supplier assignment and feedstock allocation which involves continuation of SNG production at historical levels, and where DOE has determined that the requested assignment will not adversely impact competing users due to the projected availability of supply.	Issuance of an Order which reduces SNG production below historical levels and where the probability of fuel switching or other impacts caused by the reduction is unknown.	Approval/disapproval of an application for supplier assignment and feedstock allocation which involves the construction of a new SNG plant or a major modification at an existing plant.
	Issuance of an Order for an existing plant which increases the SNG production above historical levels.	Issuance of an Order which significantly reduces the feedstock allocation to an existing plant in cases where the gas supply/demand outlook indicates significant fuel switching or economic hardship may occur as a result of the curtailment of SNG feedstock.

Section D.—*Typical Classes of Action—Continued*

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Applicable to International Activities		
Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities.		
Approval of technical exchange arrangements for information, data or personnel with other countries or international organization.		
Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.		
Approval of export of small quantities of special nuclear materials or isotopic material in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (FEDERAL REGISTER, Part VII, June 9, 1978).		
Classes of Actions Applicable to Power Marketing Administrations (PMA)		
Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area.	Upgrading (reconstructing or reconductoring) an existing transmission line.	Main Transmission System Additions—additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid.
	Construction of new service facilities such as tap lines and substations. Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area. Annual vegetation management program (systemwide).	Integrating Transmission Facilities—transmission system additions for integrating new sources of generation into PMA's main grid.
Classes of Actions Generally Applicable to Nuclear Waste Management Program		
	Exploratory and site characterization activities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives. Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decision.	DOE actions resulting in the site selection, construction, or operation of major storage and/or disposal of nuclear waste, and/or spent nuclear fuel.
Classes of Actions Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)		
The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation.		
The grant or denial of any permanent exemption for any existing electric powerplant or major fuel-burning installation, other than an exemption—(1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain State or local requirements; and (4) under section 312(g), relating jo certain intermediate load powerplants.		

[FR Doc. 80-9422 Filed 3-27-80; 8:45 am]

BILLING CODE 6450-01-M

Headquarters, 1625 K Street N.W., Washington, D.C. An additional Coordinating Subcommittee meeting has also been tentatively scheduled for Friday, September 12, 1980, also at the NPC Headquarters.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas of the meetings are as follows:

Agenda for the Refinery Capability Task Group meeting, Tuesday, August 19, 1980, beginning at 9:00 a.m.:

1. Review and approve summary minutes of the July 1, 1980 meeting of the Task Group.
2. Review and discuss progress of study groups A, B, and C.
3. Discuss plans for the final phase of the Refinery Flexibility report.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Coordinating Subcommittee Meeting, to be conducted on either September 5 or September 12, 1980, beginning at 10:00 a.m.:[1]

1. Review and discuss the progress of the Refinery Capability Task Group.
2. Review and discuss the progress of the Oil Supply, Demand and Logistics Task Group.
3. Review and discuss introductory materials for the overall report on refinery flexibility.
4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairmen of the Task Group and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either the Task Group or the Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements at any of the meetings should inform Joan Walsh Cassedy, National Petroleum Council, (202) 393-6100, prior to the meeting, and provision will be made for their appearance on the respective agendas. Transcripts of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B180, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 6, 1980.

Robert H. Lawton,

Acting Deputy Assistant Secretary for Resource Development and Operations.

[FR Doc. 80-24116 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

Compliance With the National Environmental Policy Act; Amendment to Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to guidelines to provide for a categorical exclusion for certain exemptions under the Fuel Use Act.

SUMMARY: Section D of the Department of Energy guidelines for compliance with the National Environmental Policy Act (NEPA) identifies classes of DOE action which normally do not require either an environmental impact statement or an environmental assessment. These are termed "categorical exclusions." Classification of an action as a categorical exclusion raises a rebuttable presumption that any such actions will not significantly affect the quality of the human environment. In the NEPA guidelines, it was specified that DOE might add or remove, after an opportunity for public review, actions identified as categorical exclusions based on experience gained during implementation of the guidelines.

On the basis of recent experience, DOE has determined that certain exemptions authorized under the Fuel Use Act normally are not major Federal actions significantly affecting the quality of the human environment with respect to the provisions of NEPA and therefore are eligible for categorical exclusion status. The actions considered eligible for a categorical exclusion are the grant or denial of a permanent exemption to any electric powerplant or major burning installation for limited use, i.e., fuels mixture of 25 percent or less petroleum or natural gas; peakload powerplants; certain scheduled equipment outages; emergency purposes, and automatic exemptions based on cost for units operated no more than 600 hours per year. DOE proposes to add these exemptions to its list of categorical exclusions in Subpart D of its NEPA guidelines. Public comment is invited on this proposal. Pending final adoption or rejection of this proposal DOE will utilize the categorical exclusion process for these actions on an interim basis.

COMMENTS BY: September 15, 1980.

ADDRESS COMMENTS TO: Dr. Robert J. Stern, at the address listed below.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, Forrestal Building, Room 4G-064, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4600.

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW., Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980 (45 FR 20695), the Department of Energy (DOE) published in the **Federal Register** final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). The guidelines are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of DOE.

Section D of the DOE NEPA guidelines identified typical classes of DOE action which normally do not require either an environmental impact statement or an environmental assessment. These classes of action were identified pursuant to Section 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." Section 1508.4 of the CEQ regulations defines a categorical exclusion as a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Further, allowance must be provided by an agency for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

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[1] **Note.**—Interested parties should contact NPC Headquarters prior to September 5 to confirm which meeting date(s) are confirmed.

The DOE NEPA guidelines state that DOE may add to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the guidelines. Pursuant to the guidelines, substantive revisions are to be published in the Federal Register and adopted only after opportunity for public review.

This notice proposes to revise the guidelines by adding certain classes of actions to the list of categorical exclusions in Section D of the guidelines. Those actions are as follows:

1. The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new electric powerplant or major fuel burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum. This exemption is authorized by Section 212(d) of the Act.
2. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant. This exemption is authorized by Section 212(g) of the Act.
3. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel burning installation to permit operation for emergency purposes only. This exemption is authorized by Section 212(e) of the Act.
4. The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period. These exemptions are authorized by Section 212(j) and 312(l) of the Act.
5. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new major fuel burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year. This exemption is authorized by Section 212(a)(1)(A)(ii) of the Act, and DOE by regulation has refined this section to provide for an automatic exemption for facilities which are operated only for the stated amount of time.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from the grant or denial of one of the above exemptions, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an environmental assessment or environmental impact statement would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. To assist DOE in making this determination, DOE has required in the regulations covering applications for permanent exemptions that: (1) a petitioner for any of these exemptions certify that he will comply with all applicable environmental permits and approvals prior to operating the facility; and (2) he complete an environmental checklist designed to determine whether the facility in question will have an impact in certain areas regulated by specified laws which impose consultation requirements on DOE (10 CFR 403.15). This will allow DOE to verify that no significant impact will result, or that the categorical exclusion does not apply. The typical environmental impacts of each of the proposed categorical exclusion exemptions are discussed below.

B. Mixtures Exemptions

To date, peitions for fuels mixture exemptions from 10 companies have been accepted or are in the process of being reviewed. In all cases reviewed thus far, it has been determined that neither an environmental assessment nor an environmental impact statement was required in order to satisfy NEPA requirements.

Key to all cases has been the fact that the Federal action in question (proposal to grant the exemption) results in an insignificant impact as *compared to a baseline*. In the replacement boiler situation, for example, the baseline is formed by the existing conditions, such as air and water emissions, surrounding the facility as it currently operates. In this situation, the resulting environmental impact either above or below the baseline is very small.

In the case of a totally new facility, the baseline becomes that action which the petitioner could take and not be subject to the Fuel Use Act prohibitions. This action would involve constructing the facility with units which use ony alternate fuel. Since petroleum and natural gas are ordinarily cleaner-burning than other fuels, use of up to 25 percent of those regulated fuels will result in impacts slightly below the baseline level.

Based on DOE's experience to date with mixture exemption petitions, the following generalities can be drawn in each of four main categories of impact.

Air Quality

In all cases, the proposed action (granting the mixtures exemption) has resulted in air quality that is improved over baseline levels. This is because replacement boilers are generally more efficient than existing boilers and must meet New Source Performance Standards (NSPS) if they are large enough to come within NSPS jurisdiction. New facilities burning a fuel mixture also will result in cleaner emission than would result from combustion of an alternate fuel (coal in most cases). In the majority of mixtures cases to date, the petitioners have already received the appropriate air quality permits, thus indicating that the responsible state and Federal agencies consider the potential effects of the new units to be acceptable.

Water Quality

In the case of a replacement boiler, the existing water treatment system and the plant's National Pollutant Discharge Elimination (NPDES) permit usually is sufficient so that no new permit or treatment is necessary. In the case of a new facility, there is little difference from the baseline if coal is part of the mixture exemption, and there is a net benefit if the petitioner's non-option would have involved coal and the mixture in question does not (due to coal pile runoff related impacts).

Land Use

Little additional land has been required in the case of replacement units, because the area already is industrialized and owned by the company. In the case of a new facility, the difference in impact is dependent upon whether coal would have been used with the base case, the same as with water quality.

Other Areas

Other potential impact categories (e.g., socioeconomic, sociocultural) have never been a significant issue in any case to date.

C. Peakload Exemptions

Petitions for peakload powerplant exemptions from eight utilities have been accepted by DOE; of that number, four have been reviewed for NEPA requirements. Each case has involved some added impact; however, key in all cases is the fact that the new unit is only a small addition to the existing environmental baseline, both in size (peakload units normally are about 75 megawatt units and are often located at the larger existing baseload powerplants, e.g., 500 to 1000 megawatts) and in extent of usage (peakload units can operate no more than 1500 hours per year, which equates to a capacity factor of only 17.1 percent). Impact categories for peakload powerplants can be described as follows:

Air Quality

In general, oil or gas firing has resulted in only minor increases in ambient concentrations of air pollutants (less than 15 percent). Often the increases are below the "levels of significance" established by the Environmental Protection Agency. In each case, the petitioners either have already secured or are in the process of securing the required air permits.

Water Quality

As in the case of mixtures exemptions, the existing systems and NPDES permits usually are sufficient to cover any increase in effluents from the new unit. In some other cases, whatever controls have been required by new permits make the resultant impacts insignificant.

Land Use

The area to be used in building a new peakload unit usually has already been industrialized. Normally a peakload unit requires only two to three acres of additional land.

D. Scheduled Equipment Outages, Emergencies, and Automatic Cost Exemptions

To date, no petitions for scheduled equipment outages exemptions or automatic cost exemptions have been filed with DOE. One emergency exemption petition has been accepted and a memorandum for the file demonstrating the insignificance of the action has been prepared. Common to these exemptions, however, is the fact that the new unit only will be operating when a larger existing unit or units are shut down—either in the case of a true emergency or a scheduled shutdown for maintenance, or other reasons.

The impact categories for these exemptions are characterized as follows:

Air Quality

In every case there will be a positive impact, as compared with existing emissions, because of the shutdown situation mentioned above.

Water Quality

Normally the existing system and permit will be sufficient to cover the new unit.

Land Use

Normally the area will already by industrialized and the new unit will usually be constructed within existing plant boundaries. If the unit is not to be built within existing boundaries, little extra land will be needed, probably less than one acre.

Other Areas

There is no reason to believe that any significant impacts will occur in other areas.

Proposals to deny an exemption would result in no net change to the environmental baseline.

Issued in Washington, D.C., August 5, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-24091 Filed 8-8-80; 8:45 am]

BILLING CODE 6450-01-M

[OFC Case No. 55381-2900-01-12; Docket No. ERA-FC-80-020]

Economic Regulatory Administration

Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On January 16, 1980, Republic Steel Corporation (Republic) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting one major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibit the use of petroleum and natural gas as a primary energy source in new MFBIs. Republic requested a permanent fuel mixtures exemption for the MFBI in order to use a fuel mixture of blast furnace gas, natural gas and/or oil. The natural gas or oil is to be used as a supplemental fuel for pilot, flame stabilization and process requirements.

The MFBI for which the petition is filed is a field-erected boiler (identified as unit No. 3 high pressure (HP) boiler) to be installed at Republic's Mohoning Valley District, Warrne, Ohio facility. The proposed boiler will have a design heat input rate of 467 million Btu's per hour with a steam generating capacity of 300,000 pounds per hour and will be capable of burning blast furnace gas, coke oven gas, natural gas and residual fuel oil.

ERA accepted the petition February 15, 1980, and published notice of its acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the **Federal Register** on February 26, 1980 (45 FR 12478). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to Section 701 of FUA. During this period, interested persons were afforded an opportunity to request a public hearing. The period expired April 11, 1980. No comments were submitted. No hearing was requested.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Determination has been made recommending that ERA issue an order which would grant the requested permanent exemption to use a mixture of blast furnace gas, with natural gas and/or residual fuel oil in which the amount of natural gas and/or oil would not exceed 25 percent of the total annual Btu heat input in the MFBI.

The public file containing a copy of the Tentative Staff Determination and other documents and supporting materials on this proceeding is available upon request at: ERA, 2000 M Street, NW, Room B-110, Washington, DC, Monday through Friday, 8:00 AM-4:30 PM.

ERA will issue a final order granting or denying the petition for permanent exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the **Federal Register.**

DATES: Written comments on the Tentative Staff Determination are due on or before August 25, 1980.

ADDRESSES: Fifteen copies of written comments shall be submitted to the Department of Energy, DOE Case Control Unit, Box 4629, Room 3214, 2000 M Street, NW, Washington, DC 20461. Docket Number ERA-FC-80-020 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW, Room B-110, Washington, DC 20461, (202) 653-4055.

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Order is effective as an order at the Department of Energy (DOE) on November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Sampath, Esq. Department of Energy, OSC, 1421 Cherry Street, Philadelphia, PA 19102.

Copies of the Consent Order may be obtained by written request at the freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave. SW., Room 6A152.

Issued in Washington, D.C. on the 18th day of June, 1980.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 80-[illegible] Filed 11-[illegible]-80; 8:45 am]

BILLING CODE 6450-01-M

Compliance With the National Environmental Policy Act; Final Guidelines

AGENCY: Department of Energy.

ACTION: Adoption of special procedures for major system acquisition projects involving the competitive procurement process.

SUMMARY: The Department of Energy (DOE) hereby adopts the special procedures for major system acquisition projects involving the competitive procurement of a site and/or process as previously proposed in its final guidelines for compliance with the National Environmental Policy Act (NEPA). The procedures are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Room 4G-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Room 6D-033, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6947

SUPPLEMENTARY INFORMATION: .

The DOE published its final guidelines for compliance with NEPA in the **Federal Register** on March 28, 1980 (45FR 20694). In the final guidelines DOE specifically requested public comment on Paragraph B.3.(c)(2), which was added and published as interim procedures to provide for NEPA compliance for major system acquistion projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. The special procedures provide for compliance with NEPA to the fullest extent possible.

The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

A 30-day period was established for public comment on the special procedures which are reprinted below. No written comments were received during the public comment period and accordingly, DOE hereby adopts the interim special procedures as final.

Issued in Washington, D.C. on November 19, 1980.

Ruth C. Clusen,,

Assistant Secretary for Environment.

DOE NEPA Guidelines Paragraph B.3.(c)(2)

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval or projects, by the approval of disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) * * *

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to that reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and anlyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to Comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential, or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly-available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500-1508 and in advance of a go/no-go decision.

[FR Doc. 80-36815 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the supply of 438.55 grams of uranium, enriched to 2.38% in U-235, to be used as standard reference material by the Japan Nuclear Fuel Company, Ltd.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-JA-288 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-36818 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of .55 grams of natural uranium and .55 grams of thorium to the CEA, France for use as standard reference materials.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-EU-669 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteeen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Nuclear and Technical Programs.

[FR Doc. 80-36819 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 80-CERT-037]

National Steel Corp., Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On October 21, 1980, National Steel Corporation (National Steel), Weirton Steel Division, Three Springs Drive, Weirton, West Virginia 26062, filed an application with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 for recertification of an eligible use of 3,000 Mcf of natural gas per day, which is estimated to displace approximately 600,000 gallons (14,286 barrels) of No. 6 fuel oil (1.4 percent sulfur) per month at National Steel's Weirton Steel Division located in Weirton, West Virginia. The eligible seller of the natural gas is David S. Towner Enterprises and the gas will be transported by the Columbia Gas Transmission Corporation. Notice of that application was published in the **Federal Register** (45 FR 73730, November 6, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On June 21, 1979, National Steel received the original certification (ERA Docket No. 79-CERT-003) of an eligible use of natural gas for use at the Weirton facility for a period of one year. The original certificate expired on June 20, 1980, but the applicant did not file for recertification until October 21, 1980.

The ERA has carefully reviewed National Steel's application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that National Steel's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information including a copy of the application, transmittal letter, and the actual recertification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 20, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-36816 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Peterson Petroleum, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow action established pursuant to the Consent Order.

DATE: Effective date: October 27, 1980.

COMMENTS BY: December 26, 1980.

ADDRESS: Send comments to: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620-6706.

FOR FURTHER INFORMATION CONTACT: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620-6706.

SUPPLEMENTARY INFORMATION: On October 27, 1980, the Office of Enforcement of the ERA executed a Consent Order with Peterson Petroleum, Inc. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

SECTION B.5
NEPA-INTERNATIONAL (E.O. 12114)

[3195-01-M]

Title 3
The President

Executive Order 12114 of January 4, 1979

Environmental Effects Abroad of Major Federal Actions

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1.

1–1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Sec. 2.

2–1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2–2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2–3. *Actions Included.* Agencies in their procedures under Section 2–1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2–4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2–4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2–3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2–4(a), with respect to actions described in Section 2–3, as follows:

(i) for effects described in Section 2–3(a), an environmental impact statement described in Section 2–4(a)(i);

(ii) for effects described in Section 2–3(b), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2–3(c), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2–3(d), a document described in Section 2–4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2–4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2–5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. *Exemptions and Considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2–5 do not apply to actions described in Section 2–3(a) unless permitted by law.

Sec. 3.

3–1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3–2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3–3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3–4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2–5(a)(v) does not mean or include direct loans to finance exports.

3–5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

Jimmy Carter

The White House,
January 4, 1979.

[FR Doc. 79–869
Filed 1–5–79; 3:38 pm]

SECTION B.6
DOE NEPA GUIDELINES-
INTERNATIONAL

DEPARTMENT OF ENERGY

IMPLEMENTATION OF EXECUTIVE ORDER 12114 ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Final Guidelines

AGENCY: Department of Energy.

ACTION: Final Guidelines for Implementation of Executive Order 12114.

SUMMARY: The Department of Energy (the Department) hereby adopts final Departmental guidelines implementing Executive Order 12114--Environmental Effects Abroad of Major Federal Actions, which was issued on January 4, 1979.

The guidelines published herein reflect certain revisions to the proposed guidelines, published in the Federal Register on September 6, 1979 (44 FR 52146), based upon the Department's consideration of comments received and upon experience acquired in working under Executive Order 12114. The guidelines supplement the procedures set forth in the Department's final guidelines for compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., which were published in the Federal Register on March 28, 1980 (45 FR 20694), and are designed to be coordinated with the environmental review procedures established by those procedures. They are applicable to all organizational units of the Department, except the Federal Energy Regulatory Commission, an independent regulatory commission within the Department

not subject to the supervision or direction of the other parts of the Department.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director
NEPA Affairs Division
Office of Environment
Department of Energy
Room 4G-064, Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
202-252-4600

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment
Department of Energy
Room 6D-033, Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
202-252-6947

SUPPLEMENTARY INFORMATION:

I. Background

II. Comments and Other Revisions

I. BACKGROUND

A. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., requires that Federal agencies give appropriate weight to factors affecting the human environment during all stages of their decisionmaking process. In this connection, Federal agencies are required to prepare detailed statements on proposals for major Federal actions significantly affecting the quality of the human environment.

B. Council on Environmental Quality Regulations

The Council on Environmental Quality promulgated regulations establishing uniform procedures implementing the National Environmental Policy Act on November 29, 1978 (43 FR 55978). These regulations (40 CFR 1500 et seq.) require agencies to adopt implementing procedures to supplement these uniform procedures.

C. Department of Energy National Environmental Policy Act Guidelines

On March 28, 1980, the Department published in the Federal Register (45 FR 20694) final guidelines implementing the Council on Environmental Quality National Environmental Policy Act regulations.

D. Executive Order 12114

On January 4, 1979, President Carter signed Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions. The Order represents the exclusive and complete determination by the Executive Branch of the procedural and other actions to be taken by Federal agencies to further the purposes of the National Environmental Policy Act with respect to the environment outside the United States, its territories and possessions.

E. Department Guidelines Implementing Executive Order 12114

The guidelines published herein provide the supplemental implementing procedures required by Executive Order 12114. They are intended for use by all persons acting on behalf of the Department in carrying out the Executive Order. The Executive Order and these final guidelines are not intended to create or enlarge any substantive or procedural rights or cause of action against the Department.

These implementing guidelines in large measure reiterate the Executive Order provisions. It is recommended that these guidelines be read and interpreted in conjunction with Executive Order 12114, the Department's guidelines implementing the Council on Environmental Quality National Environmental Policy Act regulations and the Department's Order 5440.1 governing internal National Environmental Policy Act processes to obtain a more complete understanding of the Department's environmental review policies and procedures.

The guidelines are applicable to all organizational elements of the Department except the Federal Energy Regulatory Commission, an independent regulatory body within the Department.

As required by section 2-1 of Executive Order 12114, the Department has consulted with the Department of State and the Council on Environmental Quality in developing these guidelines.

II. COMMENTS AND OTHER REVISIONS

Written comments on the proposed guidelines were received from the Department of State and one private organization. The Department has carefully considered all comments and has modified the proposed guidelines, as appropriate, to reflect those comments.

A. Department of State Comments

The State Department submitted a number of comments regarding the applicability of the Department's guidelines to nuclear activities. The following revisions were made to the proposed guidelines to reflect these comments:

1. Section 5.1.5 in the proposed guidelines was revised to clearly indicate that the environmental review of actions involving the export of a nuclear production, utilization or waste management facility will be accomplished under a set of Unified Procedures recently developed by the State Department and other Federal agencies, including the Department of Energy, and promulgated at 44 FR 65560 (November 13, 1979).

2. The exemption contained in the proposed guidelines regarding "small quantities" of nuclear material (number 4 in Appendix B) has been revised to remove

the "small quantity" limitation. The Department believes that this revision will more closely follow the exemption contained in Section 2-5(a)(v) of Executive Order 12114 regarding nuclear fuel and material exports. The Department believes that, in general, the export of and subsequent arrangements involving nuclear material or isotopic material in accordance with the provisions of the Nuclear Non-Proliferation Act of 1978, the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (published in the Federal Register on June 9, 1978, 43 FR 25328), and Section 131 of the Atomic Energy Act of 1954, as amended, will not have a significant environmental impact on the global commons. Section 6.1 of these guidelines requires that the Department still review every such action to determine whether an exemption is warranted. If an exemption is used, section 7 of the guidelines requires that a brief record documenting the exemption be prepared.

3. The definitions of "foreign nation," "United States" and "global commons" in section 16 of the proposed guidelines have been revised.

B. Private Organization Comments

One private organization submitted three comments on the Department's proposed guidelines:

1. Referring to Part II B. 2. of the preamble and section 4.2 of the guidelines, it was unclear to the commentor what kinds of projects could be conducted in a foreign country without requiring that country's approval.

The referenced sections in the guidelines apply to actions taken by the United States, in concert with one or more foreign nations, which significantly affect the environment of a foreign nation which is not participating with the United States in the action and which is not otherwise involved in the action, such as by regulatory control. An example of such an action could be the construction, by the United States (with Departmental funding) and a foreign nation, of a coal liquefaction plant situated near the border between that foreign nation and a neighboring country which is not participating in the project. If the construction and operation of such a plant will significantly affect the environment of this neighboring country, section 4.2 of the Department's guidelines requires that the United States prepare an environmental study relevant or related to the action, or a concise analysis of the environmental issues involved. Pursuant to other provisions in the Department's guidelines, these studies or analyses will discuss all significant environmental impacts associated with the project, including those on the environment of the non-participating foreign nation. The Department believes that this section is sufficiently clear and that no revisions are necessary.

2. Referring to the general issue of the preparation of environmental review documents by the United States in concert with foreign nations or international organizations, the commentor felt that specific guidelines are needed to avoid potential delay while responsibilities and detailed content were being coordinated.

The Department recognizes that its procedures implementing Executive Order 12114 do not contain specific guidelines governing the preparation of environmental review documents by the United States in conjunction with foreign nations or international organizations. This lack of specificity could lead to some delay in the program while these details are determined. However, the Department believes that, given the variety of foreign policy sensitivities and considerations that are present in situations involving foreign nations and international organizations, it would be impractical to develop detailed generic procedures governing the cooperative preparation of environmental review documents. The Department believes that any potential delays can be minimized by proper coordination in the early stages of the environmental review process. The Department has thus not altered the language in its proposed guidelines regarding this subject area.

3. Should a foreign nation prepare its own environmental review for an action in which the United States is involved, the commentor felt that provisions should be provided in the guidelines to allow the United States to formally adopt all or portions of this review.

The Department agrees with the commentor that this authority should be explicitly defined in the guidelines, and has revised the proposed guidelines by adding section 14.2 to so indicate.

With respect to Executive Order 12044, "Improving Government Regulations," the Department has determined that its guidelines implementing Executive Order 12114 are "significant" but not "major" because the anticipated effects of the guidelines primarily would be to provide internal direction for implementation of Executive Order 12114. Consequently, a regulatory analysis has not been prepared.

Issued in Washington, D.C., 12/18, 1980.

Ruth C. Clusen
Assistant Secretary for Environment

DEPARTMENT OF ENERGY GUIDELINES FOR IMPLEMENTATION OF EXECUTIVE ORDER 12114 - ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Part A - General

Section

1 Background

2 Purpose and Scope

3 Applicability

Part B - Actions for Which Environmental Review Is Required

4 Categories of Actions and Mandatory Environmental Review Requirements

Part C - Actions Exempted from Mandatory Environmental Review

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Appendix A Illustrated List for Determining Compliance with Section 4.3

B Generic Exemptions

Part A--General

Section 1 Background

Executive Order 12114 of January 4, 1979, represents the United States Government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States, its territories and possessions. The Executive Order requires that all Federal agencies taking actions subject to environmental review under the Order adopt their own implementing procedures.

Section 2 Purpose and Scope

These guidelines are intended for use by all persons acting on behalf of the Department in implementing Executive Order 12114. The guidelines are not intended to create or enlarge any procedural or substantive rights or cause of action against the Department.

Section 3 Applicability

These guidelines apply to all organizational elements of the Department except the Federal Energy Regulatory Commission.

Part B--Actions for Which Environmental Review Is Required

Section 4 Categories of Actions and Mandatory Environmental Review Requirements

In the decisionmaking process for actions in the following categories, the Department will prepare and take into consideration the documents or studies specified below:

4.1 major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica).

Actions in this category require the preparation of an environmental impact statement, including, as appropriate, generic, program and specific statements.

4.2 major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.

Actions in this category require the preparation of either:

4.2.1 a bilateral or multilateral environmental study relevant or related to the proposed action. The study is to be conducted by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

4.2.2 a concise analysis of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

4.3 major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(a) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk (see Appendix A); or

(b) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

For actions in this category, the Department will either:

4.3.1 prepare a document as specified in Section 4.2.1; or

4.3.2 prepare a document as specified in Section 4.2.2.

4.4 major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President pursuant to section 2-3(d) of Executive Order 12114 or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

For actions in this category, the Department will either:

4.4.1 prepare a document as specified in Section 4.1; or
4.4.2 prepare a document as specified in Section 4.2.1; or
4.4.3 prepare a document as specified in Section 4.2.2.

Part C--Actions Exempted from Mandatory Environmental Review

Section 5 Actions Exempted by Executive Order 12114

5.1 The following actions are exempt from these guidelines:

5.1.1 actions not having a significant effect on the environment outside the United States, as determined by the Department. (Actions having a potentially significant impact on the United States, its territories or possessions are subject to the provisions of the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR Part 1500, November 29, 1978) and the and the Department's guidelines implementing those regulations (45 FR 20694, March 28, 1980).

5.1.2 actions taken by the President;

5.1.3 actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

5.1.4 intelligence activities and arms transfers;

5.1.5 actions providing to a foreign nation a nuclear production, utilization or waste management facility. The environmental review of these actions is governed by the Unified Procedures promulgated by the State Department at 44 FR 65560 (November 13, 1979).

5.1.6 all other nuclear actions not covered in section 5.1.5 above, except those actions which significantly affect the environment of the global commons, which will undergo environmental review pursuant to section 4.1 of these guidelines.

5.1.7 votes and other actions in international conferences and organizations;

5.1.8 disaster and emergency relief action.

Section 6 Actions Exempted by the Department

6.1. The Department has determined that the general classes of actions which are listed in Appendix B generally do not have significant environmental impacts requiring review under these guidelines. They are hereby excluded from mandatory environmental review under these guidelines unless the Department determines that a particular action within such classes will have a significant environmental effect requiring such review. The Department may amend or expand Appendix B, as appropriate.

6.2 The Department may exempt, on a case-by-case basis, any action from these guidelines when such exemption is determined by the Department to be necessary to meet:

6.2.1 emergency circumstances;

6.2.2 situations involving exceptional foreign policy or national security sensitivities;

6.2.3 other such special circumstances.

6.3 In utilizing an exemption pursuant to section 6.2 above, the Department will consult with the Department of State and the Council on Environmental Quality as soon as is feasible.

Section 7 Required Documentation for Exempted Actions

For actions in connection with which the Department utilizes any exclusion or exemption pursuant to section 5 or 6 of these guidelines, the Department will prepare a brief record which describes the basis for its determination to utilize such exclusion or exemption.

Part D--Other Provisions

Section 8 Public Involvement

The Department will provide for public involvement in the environmental review process conducted pursuant to these guidelines to the following extent:

8.1. Environmental impact statements prepared pursuant to Sections 4.1 or 4.4.1 of these guidelines shall be subject to the provisions of:

8.1.1 Departmental guidelines regarding publication of a Notice of Intent to prepare an environmental impact statement and public involvement in the environmental impact statement scoping process;

8.1.2 40 CFR 1502.9 regarding preparation of a draft and final environmental impact statement;

8.1.3 40 CFR 1503 regarding comment procedures for a draft environmental impact statement.

8.2 Documents or studies prepared pursuant to sections 4.2, 4.3 or 4.4.2 and 3 of these guidelines are not subject to the public involvement procedures in 8.1.1 through 8.1.3 above. The Department may, at its discretion, elect to utilize any or all of these procedures for any such document or study.

Section 9 Timing

9.1 The Department will commence preparation of environmental documents required by these guidelines as close as practicable to the time the Department is developing or is presented with a proposal, and complete such documents early enough so that they can serve practically as an important contribution to the decisionmaking process.

9.2 Until an environmental document required by these guidelines has been completed and considered, the Department will take no action concerning the proposal which would have an adverse environmental impact or limit or prejudice the choice of reasonable alternatives.

9.3 For actions which have significant impacts both on the environment of the United States, its territories or possessions and on the environment of foreign nations or the global commons, documents prepared pursuant to sections 4.1, 4.2 or 4.3 of these guidelines analyzing the impacts outside the U.S. will, to the extent practicable, be prepared and reviewed in conjunction with the analyses of the domestic impacts of the proposed action.

Section 10 Contents

10.1 Environmental impact statements prepared pursuant to section 4.1 or 4.4.1 of these guidelines will follow the recommended format of 40 CFR 1502.10 and contain the types of information specified in 40 CFR 1502.11-1502.18.

10.2 Bilateral or multilateral environmental studies prepared pursuant to sections 4.2.1, 4.3.1 or 4.4.2 will contain a currently valid analysis of all significant environmental impacts of the proposed action.

10.3 Environmental analyses prepared pursuant to section 4.2.2, 4.3.2 or 4.4.3 will include brief discussions of:

10.3.1 the proposed action and the need therefor;

10.3.2 the reasonable alternatives to the proposed action which could be implemented directly or indirectly by the United States; and

10.3.3 all significant environmental impacts associated with the proposed action and the reasonable alternatives.

Section 11 Notice of Availability

11.1 The Department will, as soon as feasible, inform other Federal agencies with relevant interest and expertise of the availability of any documents prepared pursuant to these guidelines.

11.2 The Department will determine, after consultation with the Department of State, the appropriate time and manner for informing an affected nation of the availability of any relevant documents prepared pursuant to these guidelines.

11.3 As soon as practicable after notification to an affected nation in accordance with section 11.2 of these guidelines, the Department will provide notice to the public of the availability of the environmental review documents specified in sections 4.1, 4.2., 4.3., and 4.4 of these guidelines.

Section 12 Modifications to Contents, Timing and Availability

The Department will make appropriate modifications to the contents, timing and availability of documents, where necessary, to:

12.1 enable the Department to decide and act promptly as and when required;

12.2 avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

12.3 ensure appropriate reflection of:

12.3.1 diplomatic factors;

12.3.2 international commercial, competitive and export promotion factors;

12.3.3 needs for governmental or commercial confidentiality;

12.3.4 national security considerations;

12.3.5 difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

12.3.6 the degree to which the Department is involved in or able to affect a decision to be made.

12.4 Modifications to the contents of documents might include, for example, the use of generic, typical or hypothetical environmental impact analyses where critical site specific data cannot be obtained from an affected foreign nation. Regarding modifications to the availability of a document, where an affected nation notifies the Department of its desire not to notify the public of the availability of a document prepared pursuant to sections 4.2., 4.3., 4.4.2 or 4.4.3 of these guidelines, the Department may waive the requirements of section 11.3 above regarding notices of availability.

Section 13 Coordination With the Department of State

The Department will coordinate all communications with foreign governments concerning environmental agreements and other arrangements implementing these guidelines with the Department of State.

Section 14 Duplication of Resources

14.1 The Department will not have to prepare any document or study required by Section 4 of these guidelines if it determines that a document or study already exists that is adequate in scope and content to meet the requirements of these guidelines.

14.2 The Department may adopt all or part of existing environmental analyses, including those prepared by foreign countries or international organizations, when the Department determines that these analyses are adequate in scope and content to fulfill the requirements of these guidelines.

14.3 The Department will, in the early stages of preparing any document or study described in Section 4 above, request the cooperation of any Federal agency which the Department determines to possess a statutory mission or expertise relevant to the proposed action.

14.4 Where an action involves multiple Federal agencies including the Department of Energy, a lead agency, as determined by the agencies involved, will have responsibility for implementing the provisions of Executive Order 12114 using its own procedures implementing the Executive Order.

14.5 If a major Federal action having significant effects on the environment of the United States or the global commons requires preparation of an environmental impact statement by the Department, and if the action is included in Section 4.2 or 4.3 above as an action having significant effects upon the environment of a foreign nation, the environmental impact statement does not have to contain a review of these foreign impacts. The appropriate type of environmental review, as described in Section 4.2 or 4.3 above, may be issued as a separate document.

Section 15 Miscellaneous Provisions

The provisions of Sections 5 and 6 regarding exclusions or exemptions from these procedures do not apply to major Federal actions significantly affecting the environment of the global commons unless permitted by law.

Section 16 Definitions

16.1 Environment means the natural and physical environment, and it excludes social, economic and other environments. Social and economic effects do not give rise to any requirements under these guidelines.

16.2 Federal Action means any action that is potentially subject to United States Government control and responsibility. It includes actions that are implemented, funded or approved directly or indirectly by the United States Government. It does not include actions in which the United States participates in an advisory, information gathering, representational or diplomatic capacity but does not implement, fund or approve the action or cause the action to be implemented. An action significantly affects the environment if it does significant harm to the environment even though on balance the Department believes the action to be beneficial to the environment.

16.3 Foreign Nation means any territory under the jurisdiction of one or more foreign governments, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of a foreign nation's continental shelf or, to the extent its claim of jurisdiction is recognized by the United States, its fisheries zone, shall be considered to be actions having significant environmental effects on that foreign nation.

16.4 United States means the States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, American Samoa, the United States Virgin Islands, Guam and the other territories and possessions of the United States, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of the continental shelf of the United States, or on resources of United States Fisheries Conservation Zones subject to the jurisdiction of the United States, shall be considered to be actions having significant environmental effects in the United States.

16.5 Global Commons is equivalent to areas outside the jurisdiction of any nation and means all areas not described in subsection 16.3 and not described in subsection 16.4 above.

Section 17 Compliance

These guidelines are intended for use by all persons acting on behalf of the Department of Energy in carrying out the provisions of Executive Order 12114. Any deviations from the guidelines must be soundly based and must have the advance approval of the Secretary of the Department of Energy.

APPENDIX A

Illustrative List for Determining

Compliance with Section 4.3

1. The following is an illustrative, non-inclusive list of the products, emissions and effluents encompassed by section 4.3 of these proposed guidelines:

    - asbestos
    - acrylonitrile
    - pesticides
    - mercury
    - arsenic
    - polychlorinated biphenyls
    - vinyl chloride
    - isocyanates
    - benzene
    - beryllium
    - cadmium

2. The following is an illustrated, non-inclusive list of the products, emissions and effluents not encompassed by section 4.3:

    - ammonia
    - chlorine
    - sulphuric acid
    - sulphur dioxide
    - sulfate and sulfite liquors
    - caustic soda
    - nitric acid
    - nitrogen oxides
    - phosphoric acid

APPENDIX B

Actions Normally Excluded by the Department from Preparation of an Environmental Impact Statement, Bilateral or Multilateral Environmental Study or Concise Environmental Analysis under These Guidelines

1. Approval of Departmental participation in international "umbrella" agreements for cooperation in energy research and development which do not commit the United States to any specific projects or activities.

2. Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations.

3. Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.

4. Approval of the export of and subsequent arrangements involving nuclear materials or isotopic material in accordance with the provisions of the Nuclear Non-Proliferation Act of 1978, the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (published in the Federal Register on June 9, 1978, 43 FR 25328) and Section 131 of the Atomic Energy Act of 1954, as amended.

DOE FLOOD PLAIN/WETLAND
REVIEW REQUIREMENTS

federal register

WEDNESDAY, MARCH 7, 1979

PART IV

THE NATIONAL ARCHIVES OF THE UNITED STATES

1934

DEPARTMENT OF ENERGY

COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

[6450-01-M]

Title 10—Energy

CHAPTER X—DEPARTMENT OF ENERGY (GENERAL PROVISIONS)

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

AGENCY: Department of Energy.

ACTION: Final rulemaking.

SUMMARY: The Department of Energy (DOE) hereby establishes Part 1022 of Chapter X of title 10 of the Code of Federal Regulations, providing for compliance with Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands.

The regulations are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), and are designed to be coordinated with the environmental review requirements established pursuant to the National Environmental Policy Act (NEPA). The final regulations published herein contain certain revisions to the proposed regulations, published in the FEDERAL REGISTER on July 19, 1978 (43 FR 31108), based on DOE's consideration of comments received.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 6229, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-5998.

Mr. Stephen H. Greenleigh, Acting Assistant General Counsel for Environment, Room 8217, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-4266.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments Received
III. DOE Response
IV. Effective Date

I. BACKGROUND

On July 19, 1978, DOE published in the FEDERAL REGISTER (43 FR 31108) a notice of proposed rulemaking to establish 10 CFR Part 1022, DOE regulations for compliance with floodplain/wetlands environmental review requirements. The proposed regulations were drafted in response to Executive Orders 11988 and 11990 regarding floodplain management and wetlands protection, respectively, which were issued on May 24, 1977. The regulations were proposed to be applicable to all organizational units of DOE, except the FERC.

A public hearing was scheduled to be held on August 17, 1978, but only one request to speak was received. The hearing was cancelled by subsequent notice in the FEDERAL REGISTER, and the requesting party, the Sierra Club, met informally with DOE representatives to discuss its views on the proposed regulations. The formal comment period closed on August 28, 1978; DOE has, however, considered late comments in the preparation of these final regulations.

II. COMMENTS RECEIVED

Written comments were received from 12 organizations and agencies, including the Department of the Interior (DOI), Army Corps of Engineers, Environmental Protection Agency (EPA), Water Resources Council (WRC), Federal Insurance Administration (FIA), Council on Environmental Quality (CEQ), Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Georgia State Department of Planning and Budget, State of Vermont Agency of Environmental Conservation, and Marathon Oil Company.

DOE has carefully considered all comments received, and has modified the proposed regulations, as appropriate, to assure that the final regulations represent sound policy and procedures for floodplain management and wetlands protection. DOE's analysis and treatment of the major substantive comments are summarized below.

III. DOE RESPONSE

A. RELATIONSHIP TO DOE NEPA PROCEDURES AND CEQ NEPA REGULATIONS

In accordance with the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures, such as those established to implement NEPA, DOE designed its proposed floodplain/wetlands regulations to be implemented in conjuction with its proposed regulations for compliance with NEPA, originally intended to be codified at 10 CFR Part 1021 (FEDERAL REGISTER, February 21, 1978). Several commenters questioned the relationship of the floodplain/wetlands regulations to the NEPA regulations, given the fact that the DOE NEPA regulations had not been promulgated.

DOE had intended to finalize 10 CFR Part 1021 prior to the promulgation of floodplain/wetlands regulations. However, due to the recent publication of final CEQ NEPA regulations (FEDERAL REGISTER, November 29, 1978), DOE no longer intends to finalize the rules which were proposed in February. Instead, DOE is preparing implementing procedures as required by the CEQ NEPA regulations. The basic approach of coordinating the floodplain/wetlands review procedures with existing (and future) DOE NEPA procedures remains intact. However, specific references to 10 CFR Part 1021 have been deleted. In addition, DOE has modified certain floodplain/wetlands requirements and definitions of NEPA documentation used herein to be consistent with the CEQ NEPA regulations and the anticipated DOE NEPA procedures.

A related comment pertained to the administrative framework for assuring DOE compliance with its floodplain/wetlands responsibilities. DOE intends to utilize the internal framework established with respect to NEPA compliance to fulfill its floodplain/wetlands responsibilities. Such internal authorities and responsibilities are embodied in internal DOE Orders and memoranda and are not included in these regulations, in order to maintain necessary flexibility. To address this concern, however, a new provision (§ 1022.18) has been added to identify the Assistant Secretary for Environment as the central point of contact for inquiries concerning DOE's floodplain/wetlands activities.

B. DETAILED STANDARDS AND PROCEDURES

In combined comments, WRC, CEQ, and FIA suggested that the final regulations establish "specific standards" for key substantive and procedural requirements of the floodplains Order. For example, it was suggested that specific standards be provided with respect to what constitutes a "practicable alternative" to siting in a floodplain. DOI also commented that the "spirit and intent" of the two Orders requires "considerably more details" in agency procedures "to provide a higher level of consideration to the natural and beneficial values of floodplains and wetlands."

While DOE is sympathetic to the goals expressed in these comments, it believes that the evaluation of floodplain/wetlands impacts is inherently site-specific in nature, and that the determination of what constitutes a "practicable alternative" can only be made after balancing relevant factors on a case-by-case basis. DOE believes that these regulations adequately provide the framework within which this process can take place, and that these regulations, as revised, fully satisfy the requirements of both Executive orders. Additional detailed guidance will be provided, as appropriate, through internal DOE Orders, guidelines and memoranda.

C. DEFINITIONS

Several comments were received regarding DOE's definitions of terms (§ 1022.4), which differed somewhat from the definitions set forth in WRC's Floodplain Management Guidelines (40 FR 6030, February 10, 1978). Two commenters objected to the definition of "action" as "any DOE activity," and suggested that DOE adopt WRC's definition, which specifies the kinds of activities covered by the term "action." DOE had included such language in the applicability section [§ 1022.5(d)] of the proposed regulations. Moreover, it was felt that the DOE definition of action assured broad application of the floodplain/wetlands review requirements. Nevertheless, to alleviate this concern, DOE has restructured the regulations so as to include the WRC language in the definition of "action."

Several commenters objected to DOE's definition of "minimize" as "to reduce to the smallest degree practicable," again suggesting that DOE use the WRC definition, i.e., "to reduce to the smallest degree." DOE believes that its definition is justified, and notes that the WRC Guidelines explain that:

> while minimize means to reduce to the smallest amount or degree, there is an implicit acceptance of practical limitations. Agencies are required to use all *practicable* (WRC's emphasis) means and measures to minimize harm. The Order does not expect agencies to employ unworkable means to meet this goal.

In light of the WRC qualification and to avoid possible confusion concerning the intended meaning of "minimize," DOE believes it is appropriate to reaffirm the practicable nature of the term "minimize" in its definition.

Another commenter objected to DOE's addition of implementation time to WRC's definition of "practicable." The WRC Guidelines listed cost, environment and technology as pertinent factors in judging practicability. In DOE's view, implementation time is an appropriate consideration in determining practicability since it may bear directly on the achievement of program objectives. Accordingly, implementation time has been retained in the definition of "practicable."

WRC expressed particular concern over the variance in DOE's definition of "floodplain." In response to this and similar comments, DOE has modified its definitions of "floodplain," "structure," and "flood or flooding" to conform with WRC's definitions.

In order to be consistent with the terminology established in the CEQ NEPA regulations, DOE has eliminated the term "Negative Determination" (a public notice that no environmental impact statement (EIS) will be prepared) from these regulations and substituted the term "Finding of No Significant Impact" (FONSI), which is used in 40 CFR Part 1500. Until the effective date of the CEQ regulations, a Negative Determination prepared pursuant to currently applicable DOE NEPA regulations will be considered synonymous with the FONSI used herein. Similarly, the definition of an environmental assessment (EA) for purposes of these regulations, has been modified to conform with the CEQ definition.

D. APPLICABILITY

Several commenters questioned the exclusion of FERC from the applicability of these regulations [§ 1022.4(a)]. In this regard, it should be noted that FERC is an independent regulatory commission within DOE and is not "subject to the supervision or direction of any officer, employee, or agent of any other part of the Department" (DOE Organization Act, 42 USC 7171). FERC has indicated its intention to incorporate floodplain/wetlands considerations into its NEPA compliance process, which is also administered independently from that of DOE.

Other commenters questioned DOE's application of the regulations to floodplain/wetlands actions "where practicable modifications of/or alternatives to the proposed action are still available" [§ 1022.5(b)]. The reviewers could not envision a situation in which alternatives had been foreclosed and in which it was no longer possible to *modify* an activity. DOE agrees that there may be circumstances in which it is still practicable to modify a proposed activity even after implementation has begun. DOE has therefore made a change in §1022.5(b) to specify that where the review of alternatives is no longer practicable or where DOE determines to take action in a floodplain, DOE shall design or modify the selected alternative to reduce adverse effects and mitigate flood hazard. This should also eliminate the confusion some reviewers experienced concerning the meanings of "modifications" and "alternatives."

Three commenters objected to the exemptions provided in § 1022.5(e) for floodproofing and flood protection of existing DOE structures or facilities, and maintenance activities. The commenters felt that such activities may indeed have long- and short-term adverse impacts on floodplains and wetlands. In response to these comments, DOE has eliminated the exemption of floodproofing and flood protection activities, and has modified the exemption of maintenance activities to include only routine maintenance [§ 1022.5(g)]. DOE has retained language which enables consideration of the need for a floodplain/wetlands assessment for routine maintenance involving unusual circumstances.

E. PUBLIC NOTIFICATION PROCEDURES

Several commenters felt that reliance on the publication of a notice in the FEDERAL REGISTER (§ 1022.14) with respect to a proposed floodplain/wetlands action does not satisfy the requirements for early public review and and does not encourage public participation in the floodplain/wetlands decisionmaking process. It is DOE's intent to incorporate floodplain/wetlands notification requirements into the current (and future) applicable NEPA procedures and documentation. DOE believes that these public notification requirements, including the enhanced notification and scoping requirements specified in the CEQ NEPA regulations, will assure an adequate public notification process for those DOE actions, requiring an EIS. Pending the effective date of the CEQ NEPA regulations and DOE implementing procedures, DOE shall, to the extent practicable, issue a Notice of Intent (NOI) to prepare an EIS for proposed floodplain/wetlands actions, where appropriate, and shall circulate the NOI to persons and agencies known to be interested in or affected by the proposed action. New language has been added to § 1022.14 to assure that similar policies and procedures apply to floodplain/wetlands actions, for which no EIS is prepared.

DOE has retained the proposed comment periods following publication of the early public notice and the statement of findings rather than expand these periods as suggested by several commenters. It is believed that the periods allotted in the proposed regulations will permit adequate public participation without unduly delaying agency decisionmaking.

F. OMISSIONS

Four commenters cited omissions in the proposed regulations concerning certain specific requirements of the Executive orders, including policies and procedures with respect to:

1. Consideration of flood hazards for actions involving licenses, permits, loans, grants, or other forms of financial assistance;
2. Delineation of past and probable flood height on DOE property;
3. Lease, easement, right-of-way, or disposal of property to non-Federal entities;
4. Leadership to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare; and
5. Periodic review and update of these regulations.

DOE notes that these items were inadvertently omitted and has, therefore, included provisions in § 1022.3 to address items 1, 2, and 4 above; § 1022.5 to assess items 1 and 3; and § 1022.21 to address item 5.

G. MISCELLANEOUS

Four commenters cited the proposed regulations failure to identify compliance with National Flood Insurance Program (NFIP) standards as a *minimum* requirement, as stated in E.O. 11988. In response, § 1022.3(b) has been modified.

Two commenters were concerned with the procedures for making a wetlands determination in areas where the U.S. Fish and Wildlife Service National Wetlands Inventory maps are not yet available. Several possible alternate sources of information were recommended; these have been added to § 1022.11(c).

The WRC objected to the use of the final EIS as the vehicle to transmit the statement of findings because the final EIS is a pre-decisional document. WRC believes that E.O. 11988 requires the statement of findings to be issued *after* a decision is made. However, section 2(a)(2) of E.O. 11988 requires only that the statement of findings be prepared and circulated for brief public review *prior to taking action.* The final EIS is also issued for review prior to taking action. DOE believes it is useful to incorporate the statement of findings in a final EIS, where possible. Moreover, EPA in its comments, suggested it would be beneficial to issue a draft statement of findings in a draft EIS. Since E.O. 11988 provides for a period of public comment on the statement of findings, DOE feels that this document is most meaningful if it precedes the Agency's final decision.

Several commenters suggested that DOE delete the proposed requirement to review mitigation measures in the floodplain/wetlands assessment because of the Executive orders prohibition against actions in the floodplain/wetlands unless no practicable alternative is available. While DOE is aware of that requirement, it believes that the decisionmaking process as well as public participation in the decisionmaking process will be best served by a review of all relevant considerations in one document. Thus, DOE has continued the requirement that mitigation measures be reviewed along with practicable alternatives in the floodplain/wetlands assessment.

IV. EFFECTIVE DATE

Executive Order 11988 required agencies to issue or amend existing regulations and procedures within one year of its issuance to comply with the Order. DOE has exceeded the time allotted for promulgation of regulations and consequently believes that the goals of the Order will be best served by waiving the normal 30-day transition period prior to effectiveness of the regulations. Accordingly, these regulations will become effective March 7, 1979.

NOTE.—DOE has determined that because this document does not constitute a significant regulation within the meaning of E.O. 12044, preparation of a regulatory analysis is not required.

In consideration of the foregoing, Chapter X of Title 10 of the Code of Federal Regulations is amended as set forth below, effective upon publication.

Issued in Washington, D.C. February 28, 1979.

RUTH C. CLUSEN,
Assistant Secretary
for Environment.

Part 1022 is added to Title 10, Chapter X, of the Code of Federal Regulations to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Sec.
1022.1 Background.
1022.2 Purpose and scope.
1022.3 Policy.
1022.4 Definitions.
1022.5 Applicability.

Subpart B—Procedures for Floodplain/Wetlands Review

1022.11 Floodplain/wetlands determination.
1022.12 Floodplain/wetlands assessment.
1022.13 Applicant responsibilities.
1022.14 Public review.
1022.15 Notification of decision.
1022.16 Requests for authorizations and appropriations.
1022.17 Follow-up.
1022.18 Timing of floodplain/wetlands actions.
1022.19 Selection of lead agency and consultation among participating agencies.
1022.20 Public inquiries.
1022.21 Updating regulations.

AUTHORITY: E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking. It is the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to compliance with E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain/wetlands factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in floodplain/wetlands, providing opportunity for early public review of such proposed actions, preparing floodplain/wetlands assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures.

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

(b) Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the hazard and risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with the standards and criteria set forth in, and consistent with the intent of, the regulations promulgated by the Federal In-

surance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*;

(5) Minimize the destruction, loss, or degradation of wetlands;

(6) Preserve and enhance the natural and beneficial values of wetlands;

(7) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property which has suffered flood damage or is in an identified flood hazard area and which is used by the general public; and

(8) Prior to the completion of any financial transaction related to an area located in a floodplain, which is guaranteed, approved, regulated or insured by DOE, inform any private participating parties of the flood-related hazards involved.

(c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE in wetlands not located in a floodplain.

(d) Identify, evaluate, and, as appropriate implement alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and

(e) Provide opportunity for early public review of any plans or proposals for actions in floodplains and new construction in wetlands.

§ 1022.4 Definitions.

For purposes of this part:

(a) "Action" means any DOE activity, including, but not limited to:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) DOE-undertaken, financed, or assisted construction and improvements; and

(3) The conduct of DOE activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.

(b) "Base Flood" means that flood which has a 1 percent chance of occurrence in any given year (also known as a 100-year flood).

(c) "Critical Action" means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.

(d) "Environmental Assessment" (EA) means a document for which DOE is responsible that serves to: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, (2) aid DOE compliance with NEPA when no EIS is necessary, and (3) facilitate preparation of an EIS when one is necessary. The EA shall include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) "Environmental Impact Statement" means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.

(f) "Facility" means any man-placed item other than a structure.

(g) "Finding of No Significant Impact" (FONSI) means a document prepared by DOE which briefly presents the reasons why an action will not significantly effect on the human environment and for which an EIS therefore will not be prepared.

(h) "Flood or Flooding" means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(i) "Floodplain" means the lowlands adjoining inland and coastal waters and relatively flat areas and flood-prone areas of offshore islands including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

(j) "Floodplain Action" means any DOE action which takes place in a floodplain.

(k) "Floodplain/Wetlands Assessment" means an evaluation consisting of a description of a proposed action, a discussion of its effects on the floodplain/wetlands, and consideration of alternatives.

(l) "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.

(m) "High Hazard Areas" means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

(n) "Minimize" means to reduce to the smallest degree practicable.

(o) "New Construction" for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.

(p) "Practicable" means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.

(q) "Public Notice" means a brief notice published in the FEDERAL REGISTER, and circulated to affected and interested persons and agencies, which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

(r) "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

(s) "Restore" means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(t) "Statement of Findings" means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes steps to be taken to minimize harm to or within the floodplain.

(u) "Structure" means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(v) "Wetlands" means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflow, mudflats, and natural ponds.

(w) "Wetlands Action" means an action undertaken by DOE in a wetlands not located in a floodplain, subject to the exclusions specified at § 1022.5(c).

§ 1022.5 Applicability.

(a) This part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this part, review the alternatives identified in the environmental review or in the final EIS to determine whether an alternative action may avoid or minimize impacts on the floodplain/wetlands. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of alternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve floodplain values. DOE shall publish in the FEDERAL REGISTER, a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and persons or groups known to be interested in the action.

(c) This part shall not apply to wetlands projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropriated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to proposed actions located in wetlands (not located in a floodplain), this part shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property.

(d) This part applies to activities in furtherance of DOE responsibilities for acquiring, managing, and disposing of Federal lands and facilities. When property in a floodplain or wetlands is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, DOE shall: (1) identify those uses that are restricted under Federal, State, or local floodplains or wetlands regulations; (2) attach other appropriate restrictions to the uses of the property; or (3) withhold the property from conveyance.

(e) This part applies to activities in furtherance of DOE responsibilities for providing federally undertaken, financed, or assisted construction and improvements. Applicants for assistance shall provide DOE with an analysis of the impacts which would result from any proposed wetland or floodplain activity.

(f) This part applies to activities in furtherance of DOE responsibilities for conducting Federal activities and programs affecting land use, including but not limited to, water and related resource planning, regulating and licensing activity.

(g) This part ordinarily shall not apply to routine maintenance of existing facilities and structures on DOE property within a floodplain/wetlands since such actions normally have minimal or no adverse impact on a floodplain/wetlands. However, where unusual circumstances indicate the possibility of impact on a floodplain/wetlands, DOE shall consider the need for a floodplain/wetlands assessment for such actions.

(h) The policies and procedures of this part which are applicable to floodplain actions shall apply to all proposed actions which occur in a wetlands located in a floodplain.

Subpart B—Procedures for Floodplain/Wetlands Review

§ 1022.11 Floodplain/wetlands determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA requirements, DOE shall determine the applicability of the floodplain management and wetlands protection requirements of this part.

(b) In making the floodplain determination, DOE shall utilize the Flood Insurance Rate Maps (FIRM's) or the Flood Hazard Boundary Maps (FHBM's) prepared by the Federal Insurance Administration of the Department of Housing and Urban Development to determine if a proposed action is located in the base or critical action floodplain, as appropriate. For a proposed action in an area of predominantly Federal or State land holdings where FIRM or FHBM maps are not available, information shall be sought from the land administering agency (e.g., Bureau of Land Management, Soil Conservation Service, etc.) or from agencies with floodplain analysis expertise.

(c) In making the wetlands determination, DOE shall utilize information available from the following sources, as appropriate: (1) U.S. Fish and Wildlife Service National Wetlands Inventory; (2) U.S. Department of Agriculture Soil Conservation Service Local Identification Maps; (3) U.S. Geological Survey Topographic Maps; (4) State wetlands inventories; and (5) regional or local government-sponsored wetland or land use inventories.

§ 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to §§ 1022.5 and 1022.11, that this part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information:

(1) *Project Description.* This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and the nature and extent of the potential hazard shall be discussed.

(2) *Floodplain/Wetlands Effects.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wetlands, the effects on the survival, quality, and natural and beneficial values of the wetlands shall be evaluated.

(3) *Alternatives.* Alternatives to the proposed action which may avoid adverse effects and incompatible development in the floodplain/wetlands shall be considered, including alternate sites, actions, and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including but not limited to minimum grading requirements, runoff controls, design and construction constraints, and protection of ecology-sensitive areas shall be addressed.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is required, the floodplain/wetlands assessment shall be prepared concurrent with and included in the appropriate NEPA document.

(c) For floodplain/wetlands actions for which neither an EA or EIS is prepared, a separate document shall be issued as the floodplain/wetlands assessment.

§ 1022.13 Applicant responsibilities.

DOE may require applicants for a DOE permit, license, certificate, financial assistance, contract award, allocation or other entitlement to submit a report on a proposed floodplain/wetlands action. The report shall contain the information specified at § 1022.12 and shall be prepared in accordance with the guidance contained in this part.

§ 1022.14 Public review.

(a) For proposed floodplain/wetlands actions for which an EIS is required, the opportunity for early public review will be provided through applicable NEPA procedures. A Notice of Intent to prepare an EIS may be used to satisfy this requirement.

(b) For proposed floodplain/wetlands actions for which no EIS is required, DOE shall provide the opportunity for early public review through publication of a Public Notice, which shall be published in the FEDERAL REGISTER, as soon as practicable after a determination that a floodplain/wetlands may be affected and at least 15 days prior to the issuance of a statement of findings with respect to a proposed floodplain action. DOE shall take appropriate steps to inform Federal, State, and local agencies and persons or groups known to be interested in or affected by the proposed floodplain/wetlands action. The Public Notice shall include a description of the proposed action and its location and may be incorporated with other notices issued with respect to the proposed action.

(c) Following publication of the Public Notice, DOE shall allow 15 days for public comment prior to making its decision on the proposed action, except as specified in § 1022.18(c). At the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and the mitigating measures, taking into account all substantive comments received.

§ 1022.15 Notification of decision.

(a) If DOE finds that no practicable alternative to locating in the floodplain/wetlands is available, consistent with the policy set forth in E.O. 11988, DOE shall, prior to taking action, design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a brief (not to exceed three pages) statement of findings which shall contain:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable State or local floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require preparation of an EA or EIS, the statement of findings may be incorporated into the FONSI or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the FEDERAL REGISTER and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and areawide A-95 Clearinghouses for the geographic area affected.

§ 1022.16 Requests for authorizations or appropriations.

DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB, if a proposed action will be located in a floodplain or wetlands, whether the proposed action is in accord with the requirements of E.O. 11990 E.O. 11988, and these regulations.

§ 1022.17 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

§ 1022.18 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the FEDERAL REGISTER.

(c) Where emergency circumstances, statutory deadlines, of overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived.

§ 1022.19 Selection of a lead agency and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, to identify the applicable regulations, and to establish procedures for interagency coordination during the environmental review process.

§ 1022.20 Public inquiries.

Inquiries regarding DOE's floodplain/wetlands activities may be directed to the Assistant Secretary for Environment, Department of Energy, Washington, D.C. 20545.

§ 1022.21 Updating regulations.

DOE shall periodically review these regulations, evaluate their effectiveness, and make appropriate revisions.

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